Special Report:

How to Avoid the 12 Biggest Estate Planning Mistakes!

(THE DIRTY DOZEN ESTATE PLANNING MISTAKES!)

By

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Published by

The Goralka Law Firm
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INTRODUCTION

Seeing people work hard, scrape and save their whole lives, then just throw away their money - - and their family's future and legacy - - when they die or become disabled is a terrible tragedy. This almost always happens from lack of knowledge and simple failure to plan.

Unfortunately, for over twenty-seven (27) years as an estate planning attorney, I have seen this occur all too often.

How can this happen to someone who diligently watches his or her financial affairs and successfully builds a good size estate?

Again, this problem arises from just plain lack of knowledge and information. Think about it…most of our knowledge is acquired through experience. However, few of us have yet to experience the consequences of death (unless someone close to you has passed away and you've been involved in handling his or her estate).

Because of certain common misconceptions about estate planning, many people unwittingly commit terrible mistakes that later cause tremendous grief for them and their family.

Let me share some of these mistakes with you - - the mistakes that I consider to be the "The Top 12" - - in the hope that you and your family will *not* repeat them!

Mistake #1:
"I Don't Need to Update My Living Trust."

In 2013, the income tax and estate tax rates and rules were dramatically changed. Each person now has a $5.34 million exemption for estate tax purposes. This exemption is indexed to increase with inflation. In other words, a person can leave $5.34 million in assets to family or other heirs without paying any estate tax. The estate tax rate is now 40%. Fewer than 5% of all estates will be subject to estate tax under these rules.

However, not too terribly long ago, the estate tax exemption was only $675,000. The estate tax rate has been 52% and even 55%. Estate planners were very concerned about minimizing estate tax. One of the tools most commonly used by estate planners is an "A-B" Trust or "ABC" Trust which utilizes a marital deduction formula. These formula provisions can have disastrous consequences for the surviving spouse and for the children or heirs.

Most marital formulas provide that the surviving spouse's one-half (1/2) community property interest and all of the surviving spouses separate property is allocated to the "A" Trust. The surviving spouse has unrestricted access to the income and principal of the "A" Trust. Upon the surviving spouse's death, the children or heirs receive a step-up or increase in income tax basis to prevent or minimize the capital gains tax liability.

The problem is that the deceased spouse's one-half (1/2) of the community property and all of the deceased spouse's separate property is allocated to the "B" Trust. The "B" Trust is irrevocable and most often significantly limits the surviving spouse's access to the deceased spouse's one-half (1/2) interest in the trust assets.

Upon the death of the first spouse, this causes a very difficult conversation with the surviving spouse when I need to explain that he or she no longer owns half of the assets that they think they own. The conversation gets worse as I explain that a separate tax identification number is needed for the "B" Trust. A separate tax return is required for the "B" Trust. One-half (1/2) of all accounts and assets must be retitled into the "B" Trust which generates capital gains that may be taxed at the higher trust income tax rates. Finally, the children may not receive a step-up in income tax basis upon the death of the surviving spouse. As a result, the children or heirs may incur higher capital gains taxes when assets are sold after the death of the surviving spouse. All of these additional income taxes, complexity and restrictions upon the surviving spouse's use of the deceased spouse's one-half (1/2) of the community property occurs even though no estate tax is saved! A married couple with a trust created prior to 2013 should have that trust reviewed to be sure that a marital formula is not utilized.

In 2003, the Internal Revenue Service changed the income tax rules for individual retirement accounts ("IRAs"). A critical date for a retirement account is when the account holder reaches the age of 70.5. Prior to that date, tax is deferred on the growth or appreciation on the account. After that date, required minimum distributions ("RMD") must be taken which triggers the payment of tax. After 2003, a non-spouse beneficiary was allowed to use his or her age for the determination of the RMD's upon the death of the account holder. This provides a huge planning opportunity to provide for these accounts to enjoy continued substantial growth and appreciation until the account holder becomes 70.5. For example, if a 50 year old child inherits a $200,000 IRA, that child could withdraw the funds immediately which would be subject to California and federal income tax. A lump sum withdrawal would result in a net, after tax value of $100,000 based upon a 50% combined California and federal income tax rate.

After 2003, that child could instead receive about $700,000 in RMD's leaving $300,000 in the account (based upon a 6% rate of return). The account, if elected to "stretchout" or defer tax has a value of $1,000,000. The potential for wealth transfer can be mind boggling.

In 2006, the rules for governmental retirement accounts (457, 403bs, etc.) and corporate retirement accounts such as 401ks, were also revised to permit deferral of tax for accounts inherited by children or other non-spouse beneficiaries. These issues are discussed in greater detail in Mistake 7 at page 16. Trusts prepared before 2003 or 2006 may provide for the Living Trust to be the retirement account beneficiary. This often means that the deferral or "stretchout" of tax is lost. The tax would typically be due in five (5) years.

This is very important in 2014 as this is perhaps the first time in our country's history that we worry that our children will be less successful than us. Many of the employer sponsored retirement accounts are going away. Taxes are higher for our children who will have a more difficult time saving or preparing for retirement.

In 2014, the Supreme Court ruled that Inherited IRA's are not protected from lawsuits, bankruptcy, creditors or divorce. IRA funds inherited by your children could be at a risk of loss from the child's divorce, bankruptcy or lawsuit. Planning for the succession or inheritance of retirement accounts is more important than ever before.

Mistake #2:
"I Don't Think I Need a Living Trust."

Although a Living Trust may not be a fit for everybody, a Living Trust is a must for <u>most</u> people. (If you already have one, that's good, you can skip to Mistake #3. If you don't have a Living Trust, read on…)

Everyone - - whether you're single, divorced, married or an unmarried couple - - has the same objectives in establishing an estate plan.

First, distribution. Making sure the right people receive your assets (not leaving it to Courts, state laws or others to decide), they receive it at the right time (not necessarily all at once) and you keep the wrong peoples' hands out of the cookie jar!

Second, management. For you, if you're ill or disabled and can no longer manage things for yourself. And after you're gone, for beneficiaries (those who will receive or benefit from your estate) if they are too young, disabled, inexperienced or foolish to handle it on their own.

And third, preservation. Making sure the maximum amount of your lifetime's work is protected from Court and attorneys' fees, taxes and "predators" (such as divorcing spouses, lawsuits and creditors).

<u>Sadly, many people opt to use a Will, Joint Tenancy or beneficiary accounts like Pay-On-Death ("POD"), Transfer-On-Death ("TOD") or In-Trust-For ("ITF"). These can be a TERRIBLE DISASTER for you and your family</u>.

I don't have the time or space here to recite every advantage of a Living Trust, as compared to a Will, Joint Tenancy or beneficiary accounts. So, I'll simply summarize by stating that <u>a Living Trust is the *only* estate planning device that can achieve *all* of the following benefits</u>:

- Distribution of your hard-earned assets to the people *you* choose.

- Immediate management of your affairs should you become ill or disabled - - by the person *you* choose - - without any Court interference (avoiding a potentially expensive and lengthy "Conservatorship").

- Management of your intended heirs' inheritance if they are too young, inexperienced, elderly or otherwise unable to manage money on their own.

- Avoidance of the delays, headaches and considerable expenses of a Death Probate. If you don't have a Living Trust, this Court procedure may take over a year and cost your family tens of thousands of dollars - - even if you only have a relatively small estate!

- Reduction or elimination of Estate Taxes, if you are married. As opposed to Joint Tenancy or a simple Will, a Living Trust may save your family upwards of a half a million dollars (or more) in Estate Taxes! The 2010 Tax Act permits "portability" and use of the first spouse to die's federal estate tax exemption amount, without the need to establish a Living Trust that later splits into A-B Trusts at the first death. However, in order to qualify for portability, a federal estate tax return must be timely filed after the first death, which involves an expense that may not otherwise be necessary. There are other potential drawbacks to utilizing portability, rather than an A-B Living Trust, which are beyond the scope of this Report.

- Added divorce protection, if you are single, live in a community property state and should later marry. And added "separation" protection, if you are single and have a "live-in" partner but don't marry. Plus protection against property claims of a spouse's or live-in partner's heirs, if your spouse or partner should die before you.

- Privacy and protection of your family's inheritance after you're gone from their divorce claims, lawsuits, creditors or other "fortune hunters", from loss of government benefits, and from another potential Estate Tax when they die and pass it down to the next generation.

In short, <u>if you own any real estate, even just your home (regardless of your equity), or your total assets exceed $200,000, you should probably look into a Living Trust</u>, because your family's Probate fee savings alone could be substantial.

The Probate fees paid to both the Executor (the person in charge of your estate) and the Estate Attorney in California often add up to about 1% to 4% of the *gross* value of your assets. Additional costs are needed for publication, filing, and appraisals. So, if you have a home worth $500,000 (but only equity of $200,000 because you have a $300,000 mortgage), your Probate fees are based on the full $500,000 and may be $20,860! That's almost 7% of your actual equity!

Now, think about what your Probate fees would be after you add in all your other assets!

It may be argued that Joint Tenancy or beneficiary accounts can avoid Probate, but they don't achieve all the other important estate planning objectives I've pointed out.

No wonder that, for most people, I call the decision to get a Living Trust a "no-brainer".

If you're still unsure whether a Living Trust is right for you, then give us a call and register to come to one of our free Living Trust seminars - - there we will have a full 2 hours to share with you in more detail, the substantial benefits of a properly drafted Living Trust.

The words "properly drafted" now lead me to…

Mistake #3:
"All Living Trusts Are the Same."

A lot of people think that a Living Trust is just a form that can be pulled off a bookshelf or printed out of a computer. Many believe that a Living Trust done online using the internet, or prepared by a non-attorney paralegal, or by an inexperienced attorney or a bargain-priced attorney "mill" is the same as a Living Trust custom - drafted by an experienced and skilled attorney. The shocking reality is, all Living Trusts are NOT created equal!

True, all Living Trusts may be *similar*. You can buy a car that's either a Yugo or a Cadillac - - both have four wheels and an engine - - but which one would you rather have you and your family drive? (Well, according to *Consumer Reports*, you don't want to be caught in a Yugo because it could be a real death trap!)

The problem is…when will you know whether your Living Trust is a Yugo or a Cadillac? When will you know if your Living Trust will work as planned?

You learn when "you go" and that is a little too late! Or worse yet, when you're ill or disabled and you're relying on it to take care of you while you're still living!

You see, you have to be careful about who you have prepare your Living Trust. First of all, it should be done by a Law Firm, because if it isn't, you're probably asking for trouble right away! (In fact, in many states, it is illegal for anyone other than an attorney or his or her firm to prepare a Living Trust!)

Be especially careful about those internet sites or other non-attorneys. Keep in mind the critical importance of your estate plan, to protect your lifetime's assets. If you need critical surgery, would you want the nurse - - or worse yet, the orderly - - to do it?

Second, if you do appropriately seek a law firm to prepare your Trust, <u>they should be experienced in drawing up trusts and do this everyday for a living</u>, not dabble in it on the side. Some law firms only produce a few Living Trusts in an entire year. I certainly wouldn't want to get heart surgery done by a doctor who has only performed a handful of operations, or worse yet, have the surgery done by a general practitioner!

Consider this…most law schools don't even teach students about Living Trusts or how to draft them! A law firm that doesn't have a lot of experience drawing up Living Trusts may be learning how to do it *with you as the guinea pig!*

Third, look at the credentials and experience of the law firm. If they claim they specialize in Trusts, <u>do they have a State Bar *Certified* Specialist</u> in Estate Planning, Trust and Probate Law as a member of their firm? Do they have a State Bar Certified Specialist in taxation? Do they have someone with a Masters Degree in Tax Law? <u>How many years of experience</u> do they have in estate planning? <u>How many Trusts have they drafted</u>?

And don't forget to ask this even more important question… <u>how many Living Trusts have they handled *after* their clients have died - - when they are truly tested</u>? (Are they building and selling cars that have never been test-driven?)

Here's another warning: Watch out for those "bargain" priced attorney drafted Living Trusts!

You may have noticed certain advertisements that offer Living Trusts at cut rates. This may sound great, but please, *don't be pennywise and pound foolish when it comes to protecting your entire lifetime's assets!* We've found these "<u>bargain" trusts often cause more problems than if you had no Living Trust at all!</u>

For example, drafting errors can cause needless taxes and Probate expenses for your family and can even unintentionally cut out certain people you want to share in your estate.

Think about it…would you select a doctor, who your life depends on, simply by searching the internet or yellow pages and choosing the cheapest? Then, why would you do that when it comes to preserving the financial assets that you've worked so hard to accumulate over your lifetime and that your family's future may depend on? As is the case with doctors, experience and expertise *do* count.

I could go on and on about all of the technical deficiencies of poorly-drafted Living Trusts - - *many* of the Trusts that I review for clients who did them elsewhere have significant problems - - but, let me move on and address some other common misconceptions like…

Mistake #4:
"My Trustee Will Be Able to Step In and Handle Everything Immediately for Me if I'm Ill or Disabled."

Certainly, that's what a well-drafted Living Trust plan is *supposed* to do.

However, not only must your Living Trust have the proper provisions (I've found many don't), but your Living Trust must also be properly supported by some additional legal documents and tools (that many estate plans also lack).

First, your Living Trust should have language that allows the next successor Trustee, that you named to handle your financial affairs, to act right away when you're ill or disabled - - *without first going to Court*. You want to avoid the delays and expense of a "Conservatorship" when important financial matters, such as paying bills and managing assets, need to be taken over quickly. Unfortunately, with many Living Trusts, you may have to first be pronounced "incapacitated" or "incompetent" by a Court of law, which is exactly what we're trying to avoid.

One way to avoid this - - that we've time-tested and prefer - - is for your Trust to require two doctor letters before the next Trustee can step in. I mean two doctors licensed to practice, who have actually examined you and stated in writing that, in their professional opinion, you're no longer able to handle your own affairs. Not "WebMD" or someone else who is not even a doctor or who hasn't actually examined you. We've found using two disinterested third parties like this is better than relying on the judgment of your Trustee or family members or friends to determine your incapacity, because they may have an interest in your estate… or would like to control your assets!

(If you're uneasy with the thought that two doctors could declare you "incompetent" and let your successor Trustee take over your finances, keep in mind we do build in a "fail-safe". If two other doctors of your choosing at any time declare you *are* competent, you stay in charge or are placed back into control as Trustee of your Trust.)

The proper Living Trust provisions - - like the two doctors' letter requirement - - must also deal with a relatively new law that <u>many old Living Trusts and new Living Trust "forms" have not kept up-to-date with: HIPAA</u> (The Health Insurance Portability and Accountability Act). This is a federal law intended to protect the confidentiality of your private health information - - including your Social Security number that often appears on many health forms and fraud artists would love to get a hold of! Unfortunately, an unintended consequence of this law is that it has made it much more difficult for your spouse, children or others close to you to immediately access your medical information when it's needed, like when it appears that you may no longer be able to handle things and your successor Trustee needs the two doctors' letters to take over without going to Court. Your Living Trust must have the right HIPAA language in it.

Second, you need a <u>properly drafted Durable Power of Attorney for Property</u>. This will allow your successor Trustee access to assets that, for whatever reason, you may not have titled into your Living Trust (we'll discuss this in more detail in Mistake #5). This Durable Power of Attorney also enables your successor Trustee to handle certain planning and decisions not covered by your Trust, such as certain contracts (like for care in your home or at a nursing facility), planning to qualify for government benefits if you need them (like Medi-Cal nursing care benefits) or planning to reduce your Estate Taxes (like making last minute gifts to your Trust beneficiaries while you're still living). The typical statutory "form" document that many attorneys use does not include those vitally important items. Plus, like the Living Trust, the Durable Power of Attorney must have up-to-date HIPAA provisions in order for your power holder to be able to act right away when you need it, without first going to Court.

Third, you should have a supporting document known as an "<u>Advance Health Care Directive</u>" (formerly, there were two documents known as a "Durable Power of Attorney for Health Care" and a "Living Will"; these have now been combined into this one document). This Advance Health Care Directive covers medical decisions that may need to be made for you, if you can't make them yourself. These documents aren't covered by your Living Trust. The Living Trust only deals with your assets. The Directive covers decisions like operations, feeding and hydration, all the way up to the final "pull-the-plug" decision (that, unfortunately, due to modern medicine, most people and their families will face). You should have the newest version of this Advance Health Care Directive, because it's this document the hospital administrators are familiar with. Anything else may cause the administrator to kick things up to the legal department, causing delays when you need medical decisions made for you immediately.

Fourth, you also need a document known as a "HIPAA Authorization" to support your Trust, your Durable Power of Attorney and Advance Health Care Directive. This allows your decision makers immediate access to your medical information. But watch out - - just a federal government form may not be good in certain states. For example, in California, a law known as the "Confidentiality of Medical Information Act" imposes *additional requirements* on the HIPAA Authorization in order for it to be valid!

Are you starting to see how important it is that the "details" of your estate plan are correctly handled in your documents if you're ill or disabled?

Well, here's another detail…

Fifth, your decision makers need the right tools to ensure that your legal documents will be properly implemented when the time comes.

You should also have other tools we provide our clients, so your estate plan will function efficiently and quickly if you're ill or disabled - - a Living Trust "Trustee Manual". This gives your successor Trustee, your Power of Attorney and Health Document decision makers a clear, plain-English set of checklists and instructions so they know what to do, when, and how to do it right. (Think about it, they may never have taken on such responsibilities before, and what was the last time you took on a complex, vitally important task and did it exactly right the first time without any help?)

My point is, if you think your Living Trust (or the one you plan to get) will automatically take care of you immediately if you're ill or disabled - - when you most need it to work properly - - think again! It's all about the "details" being done right.

Which leads me to the next big estate planning misconception people have…

Mistake #5:
"I Have a Living Trust, So My Family Will Avoid Probate."

The harsh fact is: all Living Trusts do NOT avoid the expenses, delays and publicity of a Court Probate.

Are you shocked? Confused? You're not the only one. Many Living Trust preparers don't realize this either, because they haven't handled Trusts after clients have died.

You see, although you may have signed your Living Trust, there is another step that must be accomplished properly and completely in order for your assets to avoid a costly, disastrous Probate.

This is, the titles (or in some cases, beneficiaries) to each of your assets must be properly placed in the name of your Living Trust. Assets left outside of your Living Trust may go through Probate. In California, if the total value of assets outside your Living Trust exceeds $150,000, you may have a Probate. And even if your estate value is less but you have just one piece of real estate with a gross value over $20,000 that's not in your Trust (basically anything other than a piece of dirt in the desert!), you may still have a Probate.

Keep in mind that there are *two* forms of Probate, when you and your assets can be tied up in Court. One can occur when you're living but ill or disabled, known as a "Conservatorship". And another can happen when you're gone, known as a "Death Probate". The purpose of a Living Trust is to avoid both, but it may *not* if your assets aren't properly transferred to it.

In fact, if you're married, the failure to transfer assets to your Living Trust could cause two Death Probates, when normally in California you only have one Probate at the second death. (Plus, the failure to transfer assets to the Living Trust may cause a married couple significant and unnecessary Estate Taxes!).

Some people think that merely attaching a list of your assets to your Living Trust is sufficient to transfer them into it. The unfortunate truth is, this just doesn't work without going to Court.

Other people think that the Will they got with their Living Trust - - commonly referred to as a "Pourover Will" - - will avoid Probate of those assets left out of the Living Trust when they die. It's true that this Pourover Will catches those assets left outside the Trust and makes sure that they are placed into the Trust and distributed according to its terms. However, assets passing through a Will must typically go through Probate Court first!

If you set up a Living Trust and don't transfer your assets into it, you've only gotten half (or less) of the job done. At our firm, we assist our clients with placing their assets into their Living Trust - - so they *know* their families *will* avoid Probate. Here's how…

At the same time as you sign your Trust, we prepare legal documents (<u>deeds</u>) to transfer your real estate to your Trust. We also assist you in transferring all of your non-real estate assets by preparing "<u>transfer letters</u>". With these, our clients can typically get all of their assets into their Living Trust in a matter of days and then go onto "auto pilot" with the peace of mind that it's taken care of.

But we don't stop there like many others who prepare Trusts do. <u>Just because you transfer your assets into the Trust at the time you set it up isn't enough to guarantee you won't wind up in Probate Court</u>.

We also help make sure your *later acquired* assets get into your Trust. We give our clients an "<u>ID Card</u>" to keep in their wallets, that has on it the exact legal name and date of their Living Trust, exactly how titles should be held. So, if they open a new Certificate of Deposit, or buy a new mutual fund or piece of real estate (or refinance a mortgage and take the deed out of their Living Trust), they can pull this ID Card out and make sure that the new asset gets titled into their Living Trust from the very start (or the deed gets back in).

Plus, one other key thing we do for our clients is we offer a free three-year review to address law changes, changes in family relationships or circumstances and asset changes. We evolve as time goes by, and each of us should review our circumstances and objectives to ensure that our estate plan works as intended.

Isn't this type of follow up maintenance the kind of attention and service that you and your loved ones deserve?

Mistake #6:
"My Beneficiaries Can Get Their Inheritance From My Living Trust and Handle It On Their Own."

Over the years, our firm has handled over 1,000 trust administrations *after* clients have passed away. One of the things we have noticed is that just avoiding Probate isn't enough anymore!

Your Living Trust, the centerpiece of most all estate plans, should have proper provisions in it to protect your beneficiaries' inheritance, once it is distributed to them.

Here's an important point to keep in mind. *Your beneficiaries will receive lots more cash than you have*. You may not consider yourself "wealthy" because you don't have a lot of cash or liquid assets, or because they're locked up in places like IRAs or retirement plans. But when you die, *everything* you own may be turned into cash - - your real estate sold, your IRAs and retirement plans withdrawn, your life insurance matured. Beneficiaries may inherit a much bigger pile of cash then you have now. That's the problem.

First off, some beneficiaries clearly should have their inheritances held in trust and managed by a third party who either acts alone as Trustee or as Co-Trustee with the beneficiary. For example, beneficiaries who are too young to properly handle significant assets should receive a "staged distribution" over a period of years or as they reach certain ages or attains other milestones, such as higher education degrees. (You may not think that you have any beneficiaries who are too young, but your estate plan likely provides that if one of your primary beneficiaries is deceased, like a child, his or her share may pass to his or her young children!)

Elderly, ill, drug or alcohol addicted persons, or those easily influenced by others may need what we call a "Lifetime Trust". Those with even more significant financial management issues - - you know, the ones who if they get a buck they'll spend it! - - should likely have the greater protection of what we call a "Spendthrift Trust". Those who are currently receiving needs-based government benefits, such as Medi-Cal, SSDI, supplemental or disability income, who might otherwise lose their benefits (or have their inheritance forced to repay all the benefits they previously received), should have a "Special Needs Trust" hold their inheritance.

Now, you may be thinking, "My current estate plan already provides these forms of protection for my beneficiaries." But, <u>does your plan also have the ability to adapt to their changed circumstances or needs *after* you're gone</u>?

For example, if someone too young for distribution, later proves that he or she can handle money well prior to the date that was initially set for distribution, the Trustee should be able to give some or all of the assets to him or her earlier. If a drug or alcohol addicted person no longer has the addiction or goes into rehab, you may want your Trustee to be able to start distributing some to him or her earlier (which could be a powerful incentive for positively changing their behavior!). The spendthrift person who later shows he or she can manage the distribution, should be able to receive some or all of his or her inheritance instead of having it held in trust for their lifetime. And someone now getting government benefits may later find that the benefit is no longer available or he or she no longer needs it, and should be able to take over control of his or her own assets, if appropriate.

Our Living Trust allows itself to adapt to these changes, just like you would if you were still living. Most Living Trusts do *not* have these kinds of "powers to adapt" after you're gone.

But the really big point that we want to make here is: **even those beneficiaries who appear capable of managing money on their own now (or will someday when it is distributed at certain ages or times) should always have their inheritance held in trust too!**

This is because bad things can happen to good people. When people receive an inheritance directly out of your Living Trust and into their names, their inheritance is needlessly exposed to the claims of spouses in a divorce, creditors, lawsuits, loss of government benefits in the future should they need them, and a second estate tax when they pass away and hand down their inheritance to the next generation!

In other words, what are called "outright" distributions from your Living Trust - - distributing out of the Trust right to them - - should hardly ever occur. There is a better way to protect your loved ones' inheritance when they receive it. It is a way they can still access and control it but it is where it is not exposed to these problems.

<u>This better way is for each beneficiary's distribution to go into his or her own Personal Asset Protection Trust©</u>. Let me give you a brief snapshot of how this works.

If I am to receive one-third of your estate, one-third of your Living Trust will be divided off into a new Personal Asset Trust™ for me that will continue on. As the beneficiary, I may be the initial Trustee in control of how my moneys are invested, how they're used, and even who gets them when I pass away - - basically the same rights I would have had if the inheritance had come out of Trust directly into my name. But the distinction is that, I don't own the assets, the Trust does. The legal "walls" built around this Trust provide greatly enhanced protection against my spouse, divorce, creditors, lawsuits, loss of government benefits and another estate tax when I pass away.

No do-it-yourself, internet or bargain-priced Living Trusts I've ever seen, contain these critically protective beneficiary protection trust provisions for your beneficiaries. Some attorneys do claim to have this, but merely use a beneficiary trust commonly referred to as a discretionary, "generation skipping trust". If that's all I as a beneficiary have, an attacking third party could get a legal judgment or Court order against me, and force me, as the Trustee of my trust, to "break the trust" and distribute my inheritance to them.

The Personal Asset Protection Trust© provides an even greater level of protection by permitting me to bring in a Co-Trustee to sign off on all distributions or, if I only have a temporary problem like a divorce or lawsuit, I can be more closely defended by a "personal bodyguard" (a person unrelated to me by blood, such as a financial advisor, accountant, attorney or friend, also known as a "Trust Protector"). This Trust Protector may lock down my beneficiary protection trust "vault" until the threat against me is resolved and then return the Trustee "key" to me.

These Personal Asset Protection Trust© provisions have been tested and proven in "Asset Protection Law" for over 100 years! We didn't invent them. We just adapted their use and carefully fit them into the Living Trust.

We found that very few Living Trusts drawn by others provide this level of beneficiary protection trust protection for beneficiaries' inheritance. Keep in mind this has been only a brief discussion of the Personal Asset Trust™. For more details, you may want to call us to attend one of our free Living Trust seminars to learn more about this.

Let me put it this way, the beneficiary protection trust (essentially an asset protection trust for your beneficiaries' inheritances) is now standard equipment in just about every Living Trust vehicle we build!

Mistake #7:
"I Have a Living Trust, So My IRAs And Retirement Plans Are Fully Protected."

This mistake is, unfortunately, very common. Why? Non-attorneys are not schooled and experienced in the very technical tax rules pertaining to IRAs and retirement plans. Surprisingly, many estate planning attorneys are not knowledgeable or skilled in these rules either!

The mistake we are talking about here involves making sure that you have the right beneficiaries for your IRAs and corporate retirement plans (401k, 403b, etc.). (We'll just refer to "IRAs" from here, but we mean all of your retirement plans when we use that word.)

IRAs are not fully protected by your Living Trust. That's because IRAs typically pass directly to your spouse or other beneficiaries you name, outside of your Living Trust.

The right choice of IRA beneficiary is critical to assure your family's proper income tax *"***stretchout***"* and asset **protection**.

Based on recent IRS required minimum distribution rules for IRAs, your beneficiaries can now "stretchout" the income tax on your IRAs over their lifetimes. By using this "stretchout", your beneficiaries can continue to compound family wealth, tax-deferred, inside your IRAs for many years. That means that they will enjoy a much bigger nest egg later in their senior years, when they'll really need it! But this "stretchout" doesn't happen automatically. You must carefully consider how you hold beneficiaries to your IRAs.

You have basically three choices of IRA beneficiary (after your spouse and excluding charities).

You can name individuals, say your three children, to directly receive your IRAs as beneficiaries. However, this could be a disaster for income tax stretchout purposes, because they may intentionally or unintentionally choose to take more out than the required minimum distributions, thereby forfeiting tremendous family wealth building during their lifetimes. Furthermore, when individuals receive an IRA directly, they have no protection against spouses, divorces, lawsuits, creditors, loss of government benefits and another estate tax when they die and pass the remainder to their children.

A second option as beneficiary of your IRAs could be your Living Trust (which then will distribute the money to your loved ones). This is the way that we did it in the past and many Living Trust preparers still do it. However, under the new IRS rules, if your IRAs go directly into your Living Trust, although they might have the beneficiary protection trust protection we talked about earlier, your beneficiaries may be forced to pay all of the income taxes up front in as little as five years! The provisions of the typical Living Trust disqualify the maximum income tax stretchout!

The best way now available to assure that there will be both proper income tax stretchout of IRAs (and future family wealth building), as well as protection from beneficiaries' spouses, divorces, lawsuits, creditors, loss of government benefits and second Estate Taxes, is what we call the IRA Inheritance and Beneficiary Trust. This is basically a separate trust for your IRA.

<u>You should definitely consider the IRA Inheritance and Beneficiary Trust if you (or your spouse together) have IRAs and other corporate retirement plans totaling over $150,000</u>. At this size of account, the difference to your family over their lifetimes could be well over a million dollars!

If your IRAs and corporate retirement plans total less than $150,000, another planning option may be preferable - - a qualified annuity with a "restricted beneficiary payout". Such an annuity may be designed so that your beneficiaries will automatically receive payments equal to the "stretchout" amounts. Your beneficiaries may also be afforded a level of creditor protection for the inherited IRA. Although the payments to your beneficiaries may not be as flexible as under the IRA Inheritance and Beneficiary Trust, and the asset protection as high, this annuity option can avoid the upfront expense of establishing the trust. Note that the $150,000 amount is merely a "rule of thumb" and the best option for you should be evaluated with the assistance of a qualified professional.

This is only a brief discussion of the IRA Inheritance and Beneficiary Trust. For more details, you may want to call us to attend one of our future IRA Inheritance and Beneficiary Trust seminars.

Mistake #8:
"I Have a Living Trust, so I'm Fully Protected and Do Not Need to Plan to Protect Assets from Creditors."

I once heard a litigation expert say, "There is a lawsuit filed in this country about every six seconds!" Or, as I sometimes say, "We live in a free society - - anyone is free to sue anyone over anything!"

The problem is, if you're sued and you're totally right and the other party is totally wrong, it's going to cost you a lot anyway. Potentially tens or hundreds of thousands of dollars in legal fees and years of sleepless nights (as the case crawls through the red tape of the court system) - - until at some point you just want to scream out "Uncle!" and settle. There are lots of unscrupulous people who know this and use lawsuits as a form of "legalized extortion"!

This could affect you even if you no longer run a business or are retired. For example, anyone can claim you owe them money, or were injured in an auto accident or a slip and fall at your residence (in excess of or excluded from your "umbrella policy"). Or, if you own rental property, a tenant could sue you over toxic mold illness, a criminal act on the property or a wrongful eviction (all excluded from coverage by most property liability policies).

A Living Trust, because it is "revocable" affords you no protection against lawsuits, creditors or bankruptcy. Since you can revoke, or take out, your assets from a Living Trust, so can a Court or unwanted third-party "predators". You require planning *beyond* the Living Trust if you want the peace of mind of asset protection.

If you're concerned about asset protection, keep reading on. (If not, you may want to skip to the Mistake #9).

There are many types of asset protection planning that you can pursue, provided you understand that any such planning must be done in advance of any liabilities and must be substantiated and intended for purposes other than merely avoiding creditors. Fortunately, many asset protection strategies can be justified for the purpose of estate planning, estate tax reduction and even income tax reduction.

For example, <u>irrevocable gift trusts</u> can be established to hold, control and manage gifts that you make for others. Typically, a "friendly" third party will be named as Trustee. This strategy can not only reduce Estate Taxes, but if it is combined with some gift of either an income or remainder interest to charity, this can reduce your income taxes too! "Irrevocable" means that you cannot take these gifts back, but it also means it is much more difficult for creditors and lawsuits to access those assets. With careful, experienced drafting, "irrevocable" does not have to mean you can't access the assets later if you need them or make changes to the Trust later if you want.

Another example of asset protection is the use of <u>corporations</u> for businesses, including rental properties. When done properly, the corporate "shell" around the business may insulate your other assets from any liabilities that may attach to the business itself. Again, there can be many other justifications for incorporating a business, including the ability to gift partial interests and reduce Estate Taxes, set up a management succession plan, and reduce income taxes (either by using the lower corporate income tax brackets or shifting income through the corporation to the other family members' lower income tax brackets). If the corporation sets up a retirement plan, you may save additional income taxes. Furthermore, unprotected IRAs which originated from rollouts of your employer retirement benefits may be rolled back into a new corporation's retirement plan, where they may now enjoy greater liability protection. (IRAs are not generally creditor protected in many states.)

In my opinion, one of the most overlooked asset protection strategies that many people should be using is the <u>Family Limited Partnership ("FLP")</u> or <u>Limited Liability Company ("LLC")</u>. These both work similarly and are excellent vehicles for holding and managing family investments in real estate, stocks and bonds and even in some other active businesses. (I usually prefer the LLC for asset protection purposes over the FLP for a number of reasons that go way beyond what I can cover in this Report.)

Let me give you a quick snapshot of how the LLC works. You transfer income property, a business or other investment assets to the LLC, which is a separate legal entity. You then receive back two types of ownership interests, commonly referred to as the control interest and non-control interests.

You will retain the control interest (which usually represents only 1% to 5% of the total equity ownership). You, as LLC manager, may retain lifetime management and control over the assets, be paid a management fee or salary for running the LLC and decide the amount and timing of distributions of net income (after expenses and your management fee).

The non-control or limited interests which you initially receive are great items to gift, in part or in whole, over time, to your loved ones. The limited owners have no right to current management or control, and only receive distributions when you, the manager, decide it's appropriate.

There are many benefits to an LLC, other than merely asset protection (which we'll discuss below). Gifts of limited interests to your loved ones can be made at IRS-approved discounted values. In other words, because of the lack of marketability and lack of control associated with the limited interests, they are not worth their prorata portion of the fair market value of the underlying assets. Discounts of 25% to 35% or more can often be taken for gift and estate tax purposes, significantly reducing these forms of taxation! (Even greater discounts can be utilized when the LLC is combined with other advanced strategies, such as "GRATs" and sales to "IDGTs"!)

A GRAT is a wealth shifting devise. The GRAT is an irrevocable Trust designed to make distribution to you for a term of years, after which the assets pass to your children or other beneficiaries. The GRAT provides for future growth or appreciation to go to your kids or other beneficiaries. The GRAT helps reduce gift and estate taxes, provides you with a steady cash flow and allows you to retain control over the asset in the Trust.

An IDGT is an "Intentionally Defective Grantor Trust". The use of the term "defective" is misleading. This involves a Trust that is effective and recognized for estate and gift purposes but is disregarded or invisible for income tax purposes. Both the IDT and the GRAT can be very effective at shifting while minimizing the applicable estate or gift tax. The value of assets in your estate are "frozen" with future increases of appreciating flowing to your children or other heirs with favorable tax treatment.

The asset protection features of the LLC can be summarized as follows. If a lawsuit attacks the assets inside the LLC, these liabilities may be prevented from flowing out to the owners. Typically, the lawsuit can only reach the assets inside the LLC. (If there are multiple properties or assets, you may use a subsidiary or separate corporation to isolate liability only to a particular individual property and not allow it to affect the others in the LLC.) All owners are not liable for LLC debts, so your and your loved ones' personal assets are insulated from any liability originating inside the LLC. Similarly, liabilities of the owners that occur outside the LLC (divorce, personal creditors, etc.) typically do not flow inside and affect the LLC assets. The asset protection feature of the LLC may be enhanced by forming your trust under the laws of certain states. One of the best states providing the most favorable asset protection law is the state of Nevada.

Another significant benefit of the LLC is establishing proper succession management of your family investments. Typically, only one or two of your loved ones may really be capable of properly leading and managing the family business, but at the same time you do want your other beneficiaries to receive a protected economic interest. You can establish who will be the owner in charge of decisions relating to investing, buying, selling, refinancing, etc., while your other loved ones can be protected through the ownership of limited interests, which will entitle them to prorata distributions of profits whenever the appointed manager deems distributions to be appropriate.

In summary, an LLC (or FLP) provides numerous benefits, especially for owners of rental real estate. These benefits can include (1) significant discounts or reduction in value, if you make gifts of limited interests to reduce your taxable estate, while still retaining control of your assets; (2) significant discounts or reduction in value of interests that you keep at death for estate tax purposes; (3) liability protection; (4) proper succession management so that the right persons of your choosing will be in charge, not only after you pass away, but if you are living but are disabled; and finally, (5) a benefit not previously discussed, keeping your assets in the family. If several family members inherit a piece of property directly, any one of them (even with a small interest) might force a partition and unintended sale of the property. With an LLC, if one family member needs money or wants to get out, there can be a pre-established method to selling his or her interest to other family members rather than forcing LLC assets to be sold or selling his or her interest to some third party who could then be involved in the family's affairs.

For various reasons, your home (which may represent a significant portion of your net worth) should not be placed into an LLC or FLP. You may need additional protection for your personal residence using a special trust known as a <u>Qualified Personal Residence Trust ("QPRT")</u>.

Your personal liquid assets - - cash accounts, CD's, mutual funds, stocks and bonds - - may not be appropriate assets to place into an FLP, LLC or QPRT. In order to provide protection for these personal liquid assets, you may consider using a Domestic Asset Protection Trust ("DAPT"). A DAPT is irrevocable but may be designed to allow access to your personal liquid assets, should you need them later. A DAPT may also be designed to remove these assets from your taxable estate. A DAPT can be combined with an LLC to provide even greater asset protection.

The Asset Protection Trust began in the Cook Islands which still remains the premier location for asset protection. This is because this Trust, if properly implemented, is not subject to the jurisdiction of the United States courts. The laws of the Cook Islands impose a higher level of proof for a creditor to prevail. The cost of litigating a claim in the Cook Islands alone is a significant barrier or protection from a creditor action.

The disadvantage of a foreign trust is typically the higher cost and the need for a foreign trustee. For many people, a Hybrid Bridge Trust provides the benefits of a foreign trust with a lower cost and fewer complexities of the DAPT.

But let's assume you're not concerned about potential lawsuits, you still should consider some asset protection beyond your Living Trust and here's why…

Mistake #9:
"Medi-Cal Planning is Only for Very Modest Estates. I Do Not Have to Worry About Medi-Cal Planning Because I Have a Living Trust."

One other aspect of asset protection that people often overlook has to do with potential long-term nursing bills. Most people don't like to think about this, but statistically better than 50% of us will some day wind up in a nursing home, which can be a very expensive drain on one's assets, particularly since modern medicine now sustains Alzheimer's, Parkinson's, dementia and senility patients for up to 15 years or more! At about $100,000 or more a year now (and future nursing care costs will likely rise faster than the general inflation rate), even a wealthy person can have his or her estate significantly diminished. Unfortunately, many people cannot get reasonably-priced traditional long-term care insurance. And even if you could, this form of insurance is often unattractive because if you do not use the nursing care benefits, you and your family lose all of the premiums you deposited into the policy.

Medi-Cal Asset Protection Trusts may be used to insulate your assets and to protect your legacy from these costs. Medi-Cal is California's version of Medicaid. Medicaid is a Federal, needs-based program that provides benefits to individuals.

There are some newer, better nursing care policies you may want to look into. One is a form of "rider" attached to certain types of life insurance policies. This may involve continuing premiums, so you may also want to look into something referred to as a *"single deposit policy"*. Here, you can place one lump sum into the policy, where it will earn tax-deferred interest which you can access if you need to, and your principal has a 100% money-back guarantee at any time. The policy also provides significant long-term nursing care benefits if you need them. Better yet, to the extent the nursing care benefits are not used by you, when you pass away your family may receive a significant sum, income tax-free. Many of my clients simply transfer some of their rainy day money, such as a certificate of deposit, into this type of policy and then have the peace of mind that they've got enhanced protection from future nursing care bills. You may want to look into this with the help of an estate planning attorney and a qualified insurance professional. There is now another type of insurance option available to cover potential long-term nursing care, known as the "life insurance combo plan". A supplemental benefit or "rider" is added to a life insurance policy. This works similar to the "single deposit policy", in that a certain fixed amount is available for nursing care expenses and, if unused, a significant amount may pass to your family, income tax free. However, the life insurance combo plan is weighted more toward the family's death benefit, which can make it harder to qualify for. On the other hand, the life insurance combo plan does not require as much up-front deposit and may be paid for over several years. Both, the single deposit policy and life insurance combo plan, as well as traditional long-term care insurance, should be evaluated for your individual situation by a qualified professional.

Two of the most overlooked tools to protect assets for Medi-Cal claims are "stacked gifts" and personal care contracts. Stacked gifts are a number of smaller gifts made on a daily or frequent basis such that no two (2) gifts or checks post at the bank on the same day. The use of multiple checks each under or below the established medical limit can avoid or minimize any penalty period that might arise. The penalty period is the period of time that Medi-Cal benefits are denied because of a transfer in excess of the Medi-Cal approved limits.

Personal care contracts with family members may provide a basis to compensate family members for the care they provided. The key here is that a commercially reasonable hourly rate is determined and then used to provide for the transfer to a larger sum to cover future services. Structured properly, this provides another tool to protect and preserve family assets.

A Medi-Cal Asset Protection Trust can be used to protect the family home, other properties, stocks and other assets. Careful planning is needed to also insure that this Trust preserves the basis step up for income purposes and to avoid change of ownership for property tax purposes.

Mistake #10:
"My Estate is Too Small to Worry About Estate Taxes."

We haven't forgotten about Estate Taxes, although many people do.

Federal Estate Taxes represent potentially the most devastating "bite" in our tax system. It may range from 35% to 55% (depending on where you think the law is heading) and take one-third to almost half of everything you've worked a lifetime to accumulate - - after you already paid income and capital gains taxes, Social Security taxes and sales taxes! The rate is currently 40%. The estate tax rate and exemption are now described by many as being permanent. However, these rates will only stay at those levels until Congress and the President change their minds.

First, people think their Living Trust will avoid *both* Probate and Estate Taxes. One has nothing to do with the other. The most a Living Trust can protect for a single person is the same Estate Tax "exemption" amount he or she would be entitled to without the Living Trust. And the most a Living Trust can protect for a married couple is two exemption amounts (which they can do with special A-B provisions built into the Trust or if they take advantage of new "portability" rules contained in the 2010 Tax Act). The 2010 Tax Act permits "portability" and use of the first spouse to die's federal estate tax exemption amount, without the need to establish a Living Trust that later splits into A-B Trusts at the first death. However, in order to qualify for this portability, a federal estate tax return must be timely filed after the first death, which involves an expense that may not otherwise be necessary. There are other potential drawbacks to utilizing portability, rather than an A-B Living Trust, which are beyond the scope of this Report.

Beyond those exemption amounts (discussed further below), a Living Trust offers no Estate Tax protection.

Second, some people think their estate simply isn't big enough to incur Estate Taxes. However, most people underestimate the true size of their estate. It includes the market value of everything you own - - your home, other real estate, cash accounts, investments, retirement plan benefits (both those from your employer and your personal IRAs), your life insurance (the full, matured death benefit, not what it's worth today), your cars and all that personal stuff around your home. If you're a homeowner, when you add up all of these assets, less your liabilities, you're probably worth a minimum of anywhere from $750,000 to $3 million, and may be worth much more!

Regardless of the current size of your estate, you may still be underestimating the potential for Estate Taxes. The value that counts for estate tax is not the value today, but the value at the date of your death (for most married couples, the date when the second spouse dies). If your estate only grows at 6% a year - - from income that you just rollover in your CDs, mutual funds, annuities, retirement accounts or inflation in the value of your real estate and just good investing - - you may not realize that your estate will double in size approximately every 12 years! So, if you have a $1.5 million estate today, it may be worth $3 million in 12 years and $6 million in another 12 years after that. It's that future value at your death that may cause your loved ones to be estate taxed.

The third popular misconception many people have is that Estate Taxes have gone away. It's true that the exemption amount from Estate Taxes rose dramatically to $3.5 million in 2009 and to $5 million for 2010-2012. The estate tax exemption is now $5.34 million and is indexed to increase with inflation. However, not to terribly long ago, the exemption was only $675,000. Estate Tax Rates and the exemptions are subject to change even though some people describe these current rates and exemptions as "permanent"! The truth is that this is the first time in many years that estate tax rates and exemptions were not "temporary". In 2010, there was no estate tax at all because the government could not agree how to act. The estate tax returned in 2011. Don't be so sure that the estate tax will not change again in the future.

We can argue all you want whether the Estate Tax exemption will go up, but consider these facts. We've got the greatest deficits in history. We've yet to pay for two costly wars. We have a Social Security system starting to fail. We have a Wall Street bailout and new Healthcare Program to pay for. And if Congress decides to raise the Estate Tax exemption, it will have to raise tax elsewhere to comply with the "balanced budget" law passed a few years ago.

In other words, simply ignoring Estate Tax planning could be a disaster for your loved ones. That's not only because the Estate Tax rate could be almost 50% of the amount above the exemption. The real cost to your loved ones may be much, much more.

The Estate Tax is typically due in cash in nine (9) months after you pass away (if you're married, typically after the surviving spouse passes away). The IRS won't accept a deed or stock certificate as payment, it only accepts cash. <u>The problem that often arises is that valuable family assets are forced to be sold quickly at "fire sale" prices - - just to pay the IRS its cash</u>!

For example, let's assume you pass away with a house worth $1 million. Let's say that the estate tax due on this house is $480,000. Usually, families are not aware of this estate tax or are not ready to deal with it promptly after death. So, when they are told that they owe this $480,000 and only have a few months left before that 9 month due date hits, they often are forced to sell the house at a significantly reduced price in order to cash it out quickly! (This does not even factor in whether or not you pass away in a down market!)

Let's say that your $1 million home is frantically sold at a 20% discount or $800,000. After paying the $480,000 of tax to the IRS, your family nets $320,000 from a $1 million asset! That's an *effective* estate tax rate of about 70%! Furthermore, consider that <u>if the asset sold is a rental property or business that you intended to continue to produce family income and grow your family's future wealth, it's now gone</u>!

There are basically two ways to deal with the potential estate tax on your family wealth. First, <u>you can carefully "reduce" the value of your taxable estate</u>. I usually advise clients to do this in three phases.

<u>Phase One is "reducing" your taxable estate by the use of small gifts</u>. You may be aware that you can gift <u>up to $14,000 in value of any type of asset per year</u> to any individual (husband and wife together can gift $26,000). This amount is not taxable and does not even need to be reported on a gift tax return. These kinds of gifts can be made either directly or, if you feel that the recipient is not ready to responsibly handle the asset, it can be gifted to him or her through the means of an irrevocable trust.

The neat way to "increase" these $14,000 gift amounts is to utilize fractional or percentage interests. For example, you have a business or real estate with net equity of $285,000. If you and your spouse gifted a 10% interest, it would not be worth $28,500 - - it would be worth something much less because a 10% interest does not control the property. Normally, a valuation discount of about 15% can be taken for a fractional interest gift. So, here you could actually gift more than 10% of the property, but keep the gift value at or below the $26,000 limit!

Phase Two is carefully "reducing" your taxable estate by the use of larger gifts. For example, let's say you make a gift to an individual of $113,000 in value of any asset in one calendar year. The first $14,000 is that "freebee" the government doesn't care about, the remaining $100,000 utilizes part of your estate tax exemption now (which you have to show on a gift tax return), so again there is no current gift tax. (NOTE: Although the gift tax exemption was limited to $1 million in 2010, it has been raised to $5 million for 2011 and 2012.) The gift tax limit is presently $5.34 million.

Why would you want to use some of your estate tax exemption now? The answer is - - leverage. Remember, all appreciation in a gifted asset after the date of the gift is completely removed from your taxable estate. So, if an asset is worth $1 today, but will be worth $2 when you pass away, you only have to use $1 of your exemption now, whereas later on, you'll have to use $2 when you pass away.

A great way to make larger-sized gifts is to shift investment opportunities before they fully develop. For example, you might want to start a new business or open a new geographic location for your business or start a new line of products. You may separate that investment in an entity, like a corporation, LLC or FLP, and gift interests in it while its value is still "on the come". Or, you may gift a piece of property prior to its development or fixing it up for sale.

When you make larger-sized gifts, the issue of maintaining control over the gifted asset becomes much more important. Also, the desire to get even deeper valuation discounts than was described above is important to avoid both gift and Estate Taxes.

There *is* an "alphabet soup" of potential estate planning strategies which offer both a significant amount of continued control and deeper valuation discounts: LLCs and FLPs, QPRT, GRAT (Grantor Retained Annuity Trust), CLAT (Charitable Lead Annuity Trust), etc. You'll need to check these out with a qualified estate planner.

Phase Three of carefully "reducing" your taxable estate, particularly once your $1 million gifting exemption has been fully used, involves a number of more aggressive strategies. These include a sale to a "defective" trust utilizing a SCIN (Self-Canceling Installment Note), certain uses of "supporting" foundations, and a sale for a private annuity. These planning strategies definitely require a skilled and knowledgeable estate planning specialist.

Believe it or not, no matter what your estate size, we can probably reduce your taxable estate to zero if you're willing to do all the planning we recommend! (NOTE: Many other attorneys aren't knowledgeable about or do this kind of advanced-level planning.) This advanced-level planning, however, involves a lot of sophisticated details and adds more complexity to your life, two items most people want to avoid. Plus, you will have to give up some degree of control and the use of several million dollars of assets, again not very attractive to most people. So, what's your other choice in dealing with the estate tax?

Life insurance. (If you hate life insurance or don't think you can get it at a reasonable price, keep reading, as we will address these issues in a little bit.)

The insurance proceeds can be used to pay Estate Taxes, so your loved ones can receive your other assets as intended, free and clear. In most cases, it's best to have an irrevocable Life Insurance Trust own any policies set aside for estate tax payment purposes (and for the Trust to also be the beneficiary).

Some advisors may tell you that you can simply have your beneficiaries own your life insurance and keep the proceeds out of your taxable estate. However, in my opinion, a Life Insurance Trust is almost always the better way to go. With a Trust, you can assure that your beneficiaries pay the premium (usually from money you gift); that the policy and its death proceeds are not subject to the claims of your beneficiaries' spouses, creditors and lawsuits; that the proceeds are actually used for the purposes you intend (such as payment of the estate tax); and, that whatever proceeds may still remain when your primary beneficiaries pass away can go down to the next generation estate tax-free.

A lot of people get scared off by the idea of a Life Insurance Trust because it's "irrevocable". This is a dirty word that appears to mean that you and your spouse can never use the policy's cash value or death proceeds and can never change any of the terms of the Trust. However, a well-drafted Life Insurance Trust can be both irrevocable and flexible! Provisions can allow for cash value to be loaned back to you and allow your surviving spouse to use the death proceeds. The Trust can also be set up in a way that permits an unrelated "Special Trustee" or "Trust Protector" to change terms of the Trust (subject to your "veto") or to sell the policy to a new trust you can create later.

<u>In other words, in my opinion, there really aren't any good reasons not to have a Life Insurance Trust if you have a potentially taxable estate and you have policies with death benefits in excess of $100,000.</u>

What if you don't have any estate tax concerns or you just don't care about the estate tax - - does life insurance make any sense then? Yes! There are many other valuable, *non-estate tax purposes* for life insurance. For example, it can be used to equalize the value of estate distributions between various beneficiaries (one can get a piece of property and the other the insurance proceeds). It can provide funds for the buyout of a beneficiary's interest, if there is a family business (including real estate) and one beneficiary (or his or her spouse) just wants cash and might otherwise force a sale! And insurance proceeds can provide the funds to pay a beneficiary's income taxes on IRA and annuity withdrawals.

No matter how many logical reasons I put in front of people for having life insurance, I often still deal with two other objections.

The first one is, "I hate paying for life insurance!" Okay, then how about having Uncle Sam help pay for it? There are ways to make your premiums tax deductible, such as through a pension plan for a corporation, LLC or FLP, as discussed previously.

Also, many people are not aware that you can have a third-party finance your premiums. People too often dismiss this option because they like to be debt-free, but this debt won't be due during your lifetime! Typically, you only make very small interest payments on the amount borrowed and the lender takes a security interest in the policy and receives a portion of the policy's death proceeds. When you pencil out the small amount of interest that you pay as compared to the potential income and estate tax-free proceeds your family will receive, this is a very smart way to not only deal with Estate Taxes but also leverage and grow the size of your estate! In fact, I have had several clients do this (and keep their cash) even though they could easily afford to pay the premiums themselves!

The other objection I often get is, "What if I buy life insurance and don't need or want it later?" That's always a possibility. A lot of people think that they will lose their entire investment, except for possibly some cash surrender value. That's not necessarily the case. You may be able to later convert the insurance to a "paid up" policy with a lower death benefit, thereby maintaining the value of the investment you've already made. But, whatever you do, don't let the policy lapse, surrender it or even convert it to a paid up policy before considering a much better option - - selling it!

There is a new market now where major institutional investors purchase life insurance policies, and you may receive a *big* return on your investment, particularly if you are over the age of 75 when you sell your policy. That's because the buyer figures they only have a small amount of premiums yet to pay over your remaining life expectancy, but will soon get a large death benefit. The buyer will typically pay you a significant portion of the death benefit in cash while you're living!

In other words, there really aren't any good reasons not to at least check out the proper use of life insurance as a part of your overall family wealth planning.

Maybe you're now thinking, "I've done most everything you've told me in this Report." Well, perhaps, but don't fall into the next mistake…

Mistake #11:
"I Have a Living Trust (Plus the Other Planning You Recommended), So I'm Done!"

It almost goes without saying that, "The only constant in life is change." Yet, most people believe that once they've established their Living Trust and have setup other more advanced estate planning, that they're done. Unfortunately, this thinking is perpetuated by a lot of estate planners who give their clients the impression that creating an estate plan is a one-time deal and who never follow up later with their clients, so their clients just think that everything is still okay.

This may be one of the biggest estate planning mistakes you ever make!

First, laws change over time. For example, has your Living Trust been brought up to date with the newest estate tax and capital gains laws? Are your Powers of Attorney and Health Care documents up-to-date? (Don't think this applies to you or don't care? Read on.)

Second, new planning techniques emerge over time. Technology improves just as in any other business or professional field. For example, does your Living Trust include the beneficiary protection trust protection for your beneficiaries' inheritance - - against divorce, lawsuits, creditors, the loss of government benefits and another estate tax when it passes down to the next generation? Should you have a separate IRA Inheritance and Beneficiary Trust to properly protect and pass on your IRAs and other retirement plans?

Does your trust include provisions which allow the Trustee the flexibility to adapt to the changed needs of beneficiaries *after* you're gone? For example, a beneficiary for whom you set up a long-term trust may, after you're gone, demonstrate the ability to properly manage assets at a younger age and should have the trust terminated early either in part or in whole. Or, a beneficiary with drug or alcohol problems may later prove to be "clean" for an extended period of time and can be distributed part of his or her trust as a reward and incentive for staying clean. A spendthrift trust beneficiary may later become very responsible and capable of managing on his or her own, particularly if he or she has an important life change like a marriage or raising a family. A beneficiary receiving government benefits may no longer need them after you're gone or the benefits may no longer be available, in which case you wouldn't want to continue to tie up his or her inheritance in a very restrictive special needs trust.

Almost none of the Living Trusts that I've seen over the years have provisions allowing the Trust to adapt to these changed circumstances and needs of beneficiaries after you're gone, even though you would clearly change the Living Trust if you were still here. Your Living Trust needs to keep up with the latest planning techniques.

Still don't think this applies to you or don't care? Read on.

Third, you need to periodically review your estate plan because your relationships with people change. Do you still have the right Trustees named? Have some of them passed away, demonstrated that they are not as capable of acting as you thought, moved away or simply don't have the same relationship with you anymore? Might there be other individuals who you did not originally name as Trustee because they were too young or inexperienced, but are now capable of acting? And, what about your relationships with your beneficiaries? Does the distribution pattern you originally set up still reflect your wishes in terms of the amount you want to go to various people? Do you now want specific assets, like a property one beneficiary lives on, to go to that particular beneficiary? Are there others, such as grandchildren, you might now want to add to receive a share?

Fourth, your beneficiaries' situations and needs change during your lifetime, in the same manner as they may after you're gone (discussed above). Is the right *manner* of distribution tailored to each of your beneficiaries' current situations and needs? Should their inheritance be kept in trust and, if so, what kind of trust and for how long?

You can't simply buy a car, drive it off the lot and never service it - - and the same is true of your Living Trust "vehicle"!

If you haven't reviewed your Living Trust (and other estate planning documents) within the last 3 years, get to a qualified estate planning attorney right away! Our clients are entitled to - - and are strongly reminded by us to - - come in for a free attorney review every 3 years. What good is a well-drafted estate plan that becomes out-of-date or even obsolete by the time it comes to use it?

Well, I don't want to go on and on about this, because there's still one more important mistake - - maybe the biggest mistake - - left to address…

Mistake #12:
"I'll Get Around to It Someday!"

Hopefully by now, I've already convinced you of the need to set up a proper estate plan (if you don't have one) or to review the one you have already. Unfortunately, many people never get around to doing what they should, in which case you have essentially chosen to make one or more of the terrible mistakes I've talked about.

BEWARE: Procrastination is the "Silent Killer" of estates!

People come up with all kinds of great and seemingly logical reasons for not moving ahead with properly completing or updating their estate plan.

"I don't have the time right now." (When will you?) "I want to research and understand all of this before I get started." (If you're sick, do you put off seeing the doctor until you've read every medical journal related to your problem, assuming you even know what your problem is?)

"I'm not sure about who I want to be my Trustee, beneficiary, etc." (Estate planning attorneys are sometimes referred to as "counselors", which in fact is a much better description of how we can assist you in making these types of important estate planning decisions before documents are created.)

"It will cost too much." (Many estate planning attorneys, like us, will offer you a free initial consultation, at the conclusion of which they will quote you a fee depending on the type of work that needs to be done. In any event, I'm sure the fee for proper estate planning will be significantly less than the cost to your loved ones of doing nothing!)

Hopefully this Report has moved you toward action and you'll make an appointment with a qualified estate planning attorney *right away!*

Then, you can enjoy the peace of mind that comes with knowing your responsibilities to others have been taken care of…and then you can concentrate on living!

Happy estate planning!

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