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7 Common Estate Planning Mistakes to Avoid

Simply stated, estate planning is the process of developing and implementing a "master plan" to facilitate the distribution of your assets after your death. Life isn't static, so it's a good idea to revisit your estate plan regularly and update it when necessary. Just as important, you'll want to avoid these 7 common estate planning mistakes:

1. Failing to use your full estate tax exemption
2. Not having a lifetime trust in place
3. Neglecting to maximize GST-exemption and other estate planning tools
4. Lack of trust flexibility in planning for wealth transfer
5. Not using proper ownership structures
6. Selecting the wrong location to establish your trust
7. Choosing the wrong trustee

1. Failing to Use Your Full Estate Tax Exemption

The lifetime federal estate tax exemption in 2024 is $13.61 million for individuals and double that, $27.22 million, for married couples[1] That means your heirs avoid paying taxes on estates that fall below those thresholds—for now.

On Jan. 1, 2026, those estate tax limits will revert to their pre-2018 levels, or half their 2024 amounts (adjusted for inflation). To make the most of the higher exemption thresholds before they expire, consider working with your legal team to set up trusts, make gifts or utilize other estate planning tools appropriate for your personal situation.

2. Not Having a Lifetime Trust in Place

Many people assume all trusts offer protection from creditors. But there are several different types of trusts, each providing different levels of control, protection and outcomes. Often, trusts stipulate that distributions of principal be made when beneficiaries reach a certain age (for example, at 35, 45 and 55 years old). Any distribution from a trust may expose those assets to creditors and, if not properly segregated, could become marital/community property and see half possibly lost in a divorce.

To protect against these undesirable outcomes, irrevocable lifetime trusts are an attractive strategy for safely passing wealth to future generations. Lifetime trusts:

- Provide greater creditor protection for beneficiaries by keeping assets in an irrevocable trust for the duration of their lifetimes
- Typically have distribution standards that protect beneficiaries from wasting trust assets
- Allow the grantor to control how the beneficiary is able to utilize their inheritance
- Offer greater creditor protection if controlled and managed by an independent corporate trustee

Although lifetime trusts are not for everyone, they are generally ideal for high-net-worth individuals who want to protect their assets or use their estate exemption and parents who are concerned about their children's financial decision-making.* Additionally, they can help shield assets from current or expected creditors.

3. Neglecting to Maximize GST-Exemption and Other Estate Planning Tools

One way you can take advantage of current federal estate tax exemption amounts is to set up a generation-skipping trust (GST), which allows transfers of $13.61 million (individuals) or $27.22 million (married couples) directly to the GST for the benefit of grandchildren without triggering federal GST taxes.[2] Like the estate tax exemption, the GST tax exemption is due to sunset in 2026.

Another strategy for preserving family wealth is a family bank. As a family-funded entity, it offers financing only to family members or family-owned assets and enables you to create a family legacy while supporting entrepreneurship, offering flexibility and potentially reducing inequity in future generations. Alternatively, you may want to consider establishing a private trust company, which provides fiduciary and trustee services to a single family group and creates a process around the stewardship of your wealth.

4. Lack of Trust Flexibility in Planning for Wealth Transfer

If not designed properly, trusts can lack the flexibility required to plan dynastically. It's essential that any trusts you set up are flexible enough to adapt to changing times, circumstances and tax laws.

For example, you'll want any trust you have created to provide for:

- Changing the trust situs, or moving a trust from one state to another
- Decanting, which allows for the distribution of assets from an old trust to a new one
- Establishing a trust protector, who has powers over the trust but is not the trustee
- Splitting a trust into two or more separate trusts, or combining two or more separate trusts into a single trust
- Removing or replacing trustees
- Providing for an optional power of appointment

5. Not Using Proper Ownership Structures

The ownership structure of your assets could have long-term implications for estate planning, taxation and asset protection. That's because whether an asset forms part of your estate is directly related to how it is owned. Three key ownership structures include sole ownership, joint ownership and tenants in common.

Proper structuring of assets can:

- Reduce their fair market value—and, in turn, reduce estate taxes
- Provide greater control of investments
- Simplify administration
- Enhance liquidity control

6. Selecting the Wrong Location to Establish Your Trust

Trust creators and beneficiaries can choose to live anywhere. However, a trust is considered to be a "resident" of, and is governed by, the state where the trustee (either an individual or institution) is located. For that reason, establishing your trust in a state whose laws are favorable to the type of trust you want to set up is important.

States that have put in place beneficial trust legislation include Alaska, Delaware, Florida, Nevada, New Hampshire, South Dakota, Tennessee and Wyoming. As you weigh the location for your trust, states' statutes regarding trust flexibility, asset protection and taxes may also be key factors in your decision.

7. Choosing the Wrong Trustee

Oftentimes, the choice of a trustee is not given the deliberation it deserves. After all, the role of trustee comes with considerable responsibilities as well as significant potential liability.

Trust creators frequently turn to family members in the belief that they, more than friends or third parties, are best suited to make decisions concerning trust assets that eventually will be distributed to other relatives. But given the time and knowledge the role of trustee requires, a corporate trustee may be a better option.

Corporate trustees are regulated by external agencies and internal auditors and are covered by liability insurance in the event of a mistake. What's more, a corporate trustee is a neutral party that administers the trust in an unbiased manner, seeking to minimize the potential for family conflict.

TAP INTO OUR TRUST SERVICES

At Mariner, our trust professionals can work with you, your advisor, your legal team and our in-house tax team to create a trust that complements your overall wealth management plan and helps to ensure your wishes and goals for your assets will be met.

For more information visit: **mariner.com**

SOURCE:

[1,2] "Estate and Gift Tax"

*Once established, irrevocable trusts can't be changed or canceled by the grantor (hence the "irrevocable" in their name).