Bad estate planning can be felt for generations

ROB RIKOON

Real Money

Will you or won't you?

Having a properly drawn up will or living trust is a vital part of any financial plan, but it is an area that few people spend enough time on. Is it because we don't like dealing with the unpleasant fact of our own mortality? Or is it because we think we will live to a ripe old age and therefore can afford to postpone dealing with this important issue?

Regardless of the reason, the result is the same. Too many people do too little planning leaving too many family members to deal with too big a mess. Why don't you do your loved ones a favor and take a minute to review your own will and commit to make whatever appropriate changes are needed at the present time? The professional advisers at my company have had the opportunity to review the estate plans of hundreds of people and have compiled this compendium of common mistakes many people make in this area:

■ **Having no will or living trust.** It's surprising just how many people have never bothered to write up a will at all. Studies indicate as many as 80 percent of adult Americans have no will. The aftermath of not having a will can be felt for generations.

I was involved in a case where a husband died without a will but left an estate valued at about $1 million. Based on state law, about half of his estate went to his 9-year-old child and the balance went to his widow. Since a minor cannot receive assets, the court appointed an attorney to act as custodian for the child's assets. This attorney was inexperienced in money management and had never met the family. The end result was a situation that few husbands would wish on their loved ones.

A living trust is not much more complicated than drafting a will and avoids probate (the legal proceeding necessary to transfer title after someone dies) on those assets already titled in the name of the trust.

■ **Electing a bank as trustee without the right of removal.** Most older wills that name a bank as executor (the person or entity responsible for handling estate matters) or as trustee (those responsible for ongoing management of one's financial affairs) do not have provisions for replacing the named executor/trustee with another person/corporate trustee. We always insist that our clients include provisions for removing a corporate trustee.

Consider the case of a client who I will call Mary. Mary's parents died when she was in her 30s and left her a large sum of money held at a local bank trust department. When I met with Mary, she had tears of frustration in her eyes and years of pent-up anger. She had made many calls to her trust officer, who did not bother to return her calls. When the trust department did call, they were never forthcoming about performance information, often after repeated requests.

I reviewed the trust agreement and found that her father had had the foresight to include trustee removal powers. I called the head of the trust department and told him that if we did not receive a call from her trust officer in the next 10 minutes, we would move the trust to another bank. We got our call. She now regularly gets invited to the bank's executive dining room and we were able to negotiate much lower fees and increased investment options of mutual funds outside the bank's normal "menu." My experience is that even the "unbreakable" trust can be moved to a more cooperative trustee if you know what you are doing.

■ **Disbursing money too soon.** The typical will and trust disburses money at age 21 or 25. In my opinion, this is much too young. Few people have the maturity and experience to manage money properly at this young age. The

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tendency is to either spend money on things that the parents would not approve of or to make poor investments. We normally have the money held in trust until at least age 30 with some or all of the trust income being disbursed each year to the beneficiary.

My own estate plan calls for the first third (of what may be a paltry amount!) to be distributed at age 32, the second third to go out at age 39, and the final amount to be tendered at age 46.

Why so late? I feel that the first large amount of money that most young adults will wisely spend is to become homeowners. Not many people are ready or able to settle down in one place before age 30.

The second key event is paying for a future child's college education. By age 40, most people who are going to have a family are started and that means looking ahead to the cost of higher education.

The third great financial strain is retirement. While we can predict in some small way our own need to save for our own retirement, it is quite possible that our children will have a more difficult time putting away enough money for their elder years and the cost of long-term health care.

By our mid-40s, most of us are looking ahead to the years when our personal earning powers will decline while our zest for life hopefully increases! The money released at this point will then be used as a final safety net for the heirs and perhaps be passed down to future generations according to individual needs.

While you're reviewing your decisions about when to distribute your assets and choices for executors, guardians and trustees, think if you are still happy with your current decisions.

You owe it to your family to make sure this important area of your personal finances is in order. Many attorneys offer a free hour's consultation to help you ascertain if things are in order. The difficult issues concerning who gets what and when should all be decided and set down with pencil and paper before an initial meeting with a lawyer.

These are difficult issues to work through; especially when there are complicated family dynamics, which is most of the time! However, consider the alternative: a judge, lawyer and state laws deciding for you, in your absence, what happens with your earthly goods. Take a day and work it out. Your family will thank you!

Rob Rikoon is the president of Rikoon Investment Advisors, Inc. a 10-person investment management and financial planning firm founded in 1983, with offices in Santa Fe, Albuquerque, and Taos (989-3581).

His book, Managing Family Trusts: Taking Control of Inherited Wealth, *was published in July 1999 by John Wiley and Sons of New York, one of the nation's leading publishers of financial textbooks and research. Questions or comments can be directed to Rob via email at rrikoon@aol.com.*