

Common Mistakes in "Do It Yourself" Estate Planning

by Edward "Ted" H. Miller, Esq.

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HOOK LAW CENTER
Legal Power for Seniors

Tel: 757-399-7506
Fax: 757-397-1267

Locations:

Virginia Beach
295 Bendix Road, Suite 170
Virginia Beach, VA 23452

Suffolk
5806 Harbour View Blvd.,
Suite 203
Suffolk, VA 23435

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Although it is not advisable to do so, many people decide to plan their estates without professional assistance. This newsletter will address common errors and oversights people make when planning their affairs in this manner. It is noteworthy, however, that even if one is using a professional advisor, if he or she is inexperienced in estate planning, these same mistakes may occur.

I. The Failure To Properly Analyze The Titling Of Assets And Beneficiary Designations

Many people who plan their estates without professional assistance overlook issues such as joint titling and beneficiary designations. One's Last Will and Testament only governs the disposition of certain assets. Over the last twenty years, there has been a rapid increase in the use of non-probate titling mechanisms, such as Transfer-on-Death and Payable-on-Death accounts. Moreover, jointly-titled assets pass automatically to the surviving owner, and are not governed by a Last Will and Testament or Revocable Trust.

II. The Failure To Manage Incapacity

While people often associate estate planning with passing away, incapacity is one of the biggest challenges families face as their loved ones age. Medical advances have made it possible for people to live for extensive periods of time after they have lost their ability to manage their personal finances. Diseases such as Alzheimer's Disease, Parkinson's Disease, and Dementia have imposed financial hardship upon many elderly Americans. The cost of long-term care is on the rise, and without a proper incapacity plan in place, a family may be forced to spend the entirety of its wealth on long-term care. Having a proper Power of Attorney in place allows for one's family to re-title or restructure assets in order to apply for long-term care benefits. A properly-drafted Power of Attorney also allows loved ones to contract with assisted living facilities.

III. Problems With Taxation And Fees

There are many forms of taxation which are commonly overlooked when people plan their estates without professional representation. The taxation

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system includes the Estate Tax, the Gift Tax, the Alternative Minimum Tax, the taxation of Trusts, as well as tax issues on the state level, such as the Probate Tax. While careful study can assist one in avoiding these taxes, professionals often know how these tax systems intersect at death, and thus can review an estate in a holistic manner. Issues such as planning for a step-up in basis at death are often overlooked by those who do not have professional assistance.

IV. Problems With Fiduciary Selection

Many people who decide to draft their own holographic Last Will and Testament, for example, fail to choose a successor Executor to serve, if their first Executor is unable to do so. People fail to serve as Executor for many reasons, and having at least one backup is a good idea. A chosen person may move away or simply decide they do not want to take on the responsibility of being a fiduciary. One must actively manage conflicts of interest in an estate plan; conflicts of interest can dramatically change over time. The trustworthy uncle or aunt who used to lead a balanced life may have come across hard times. As peoples lives change, their ability to serve as a trustworthy and prudent fiduciary may change as well. Thus, fiduciary selection merits careful reflection and frequent review.

V. Problems With Fiduciary Compensation

One should consider carefully whether a fiduciary should be compensated. Common fiduciaries are Trustees under a Revocable Trust, Executors under a Last Will and Testament, and Agents under a Power of Attorney. It is common to chose a family member to manage personal financial matters. However, many family members may find it hard to act without being reimbursed for out-of-pocket expenses, especially if they have to travel to serve. Those who serve without compensation may be tempted to co-mingle assets in an estate with their own. However, if compensation is available, it should be commensurate with the services being rendered by the fiduciary.

VI. The Failure To Consistently Update An Estate Plan

Ideally, estate planning documents should be reviewed every three to five years. Laws, assets, and personal wishes change frequently. Even if one's wishes have not changed, family dynamics change. If one moves to a new location, an update may be appropriate. Many estate plans fail due to an issue which frequent review would have addressed.



Prosthetics for Animals

Hook Law Center: Kit Kat, are animals really being fitted with prosthetics?

Kit Kat: Yes, PBS just aired a special program about this on 4-9-14. If you missed it, you can watch it online and the title is "My Bionic Pet." It's so fascinating! Not only are animals benefiting, but so are humans. The spirit of these animals inspires all who see them. From crafting an artificial beak for a swan, artificial hind legs for a border collie, a tail for an alligator--it's very individualized. Louisiana State University is one of the universities with a veterinary school that is active in this effort. It had never before attempted an equine amputation, yet they successfully accomplished one for Molly, a lovely pony that had been orphaned during Hurricane Katrina. Then, Molly had the misfortune to have a dog attack her right leg. It was injured to the point requiring amputation. Equines are difficult to treat when this happens, because if they go for too long a time on 3 legs, laminitis sets in, and the horse has to be euthanized. But somehow, the medical team there got it just right. After the surgery, her leg healed and there was enough time to fit her for a prosthetic leg before anything serious happened.

One of the narrators in the segment is Martin Kaufmann of OrthoPets in Denver, Colorado. He says, we are "not looking at animals as discardable" today. And that's terrific. In fact, 1,000 animals per year are being fitted with prosthetics. Halifax, Nova Scotia also has a center dealing in animals requiring prosthetics. They helped a border collie who was born with 2 defective hind legs. She now runs and jumps like any other dog. The program also shows a llama with a new hind leg, as well as a cart that was constructed by his veterinarian owner for a pig named Chris P. Bacon, because both his hind legs were fused close to his body. Whatever the case, these animals are teaching us how to cope with adversity. In the process, we are learning more about prosthetics, and that knowledge can benefit humans.

(PBS, "My Bionic Pet, aired 4-9-14).

Upcoming Events

- Shannon Laymon-Pecoraro will be attending the National Association for Medicare Set Aside (NAMSAP) Conference in Las Vegas, NV on **May 8-9, 2014**.
- Andrew Hook will be speaking at the Virginia Benefits Program Organization (BPRO) Spring Conference on **May 8, 2014** in Williamsburg, VA. Mr. Hook, Natalie Hale, CECC and Jennifer Woods-Pagano, CECC will be attending the three-day conference.
- Jessica Hayes will be speaking on Special Needs Trust at the Virginia Beach Central Library on **May 10, 2014** from 2:00 pm to 4:15pm.

- Andrew Hook will be speaking on Services Available to Seniors at the Major Hillard Library on **May 13, 2014** at 10:30am.
- Andrew Hook will be speaking on Financial Services Long-Term Care Insurance at the National Academy of Elder Law Attorneys (NAELA) Conference on **May 16, 2014** in Scottsdale, AZ. Mr. Hook will be attending the two-day conference.

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