

Elder Law and Estate Planning Mistakes to Avoid

#1 Blunders with Deeds

Many people use deeds as a way of transferring property at death and avoiding probate. Unlike most estate planning documents, deeds cannot always be easily revoked or changed. Whenever property is transferred by deed, it can raise a myriad of unforeseen problems. For example:

* **Life estate deeds** are a type of deed that allows an individual to retain the right to live on the property for life and at death the property automatically goes to the beneficiary. However, if not worded properly this deed can result in:

- 1) a gift for gift tax purposes
- 2) a gift that would disqualify a person for Medicaid for long term care and
- 3) adverse tax consequences, both real estate and capital gains.

* There may also be **problems with transferring homestead property into a trust**. Conflicting court cases have created a controversy as to whether this effects your homestead protection against creditors so many attorneys are wary of this. Also, only an individual (not a couple) can transfer homestead property into a trust. If you have an old deed where both husband and wife have deeded property into a trust, this should be reviewed.

* Whenever there is a change of ownership there can potentially be **adjustment in real estate taxes to the current market value. THIS CAN BE DISASTROUS**. Also, there may be capital gains issues. These all need to be explored.

* Your homestead property is completely exempt from claims of creditors. Any **transfer of your homestead property** should be looked at as to whether this transfer will in any way effect your protection from creditors.

#2 Blunders with Wills

Wills should be done professionally by a competent elder law or estate planning attorney and not any lawyer. An experienced practitioner will know to **make sure to include important provisions** such as permitting the sale of property, which avoids the need for court permission and **avoids other provisions** such as not requiring a sale of homestead property which will void the homestead protection for creditors and providing for minor children. **(These are biggies!)**

MORE WILL BLUNDERS: Doing it yourself, not doing one because you think you don't need one or relying on old wills where we might have to find witnesses from

30 years ago are all common but potential serious mistakes.

#3 Blunders in Trusts

Doing a Revocable Living Trust is only half the job. The **trust must be funded** - meaning that assets must be titled in the name of the trust. This should be done with the direction of an elder law attorney since not all assets are suitable for transfer into a trust.

Revocable Living Trusts **are not asset protection tools**. They do nothing for protecting money for long term care, Medicaid or Veteran's Benefits purposes. In fact they can be a big problem. That's a big surprise to many of my clients.

#4 Blunders With Durable Powers of Attorney and Health Care Surrogates and Living Wills

In general, these "Advance Directives" should be relatively **current** and be **very specific** as to the powers delegated to the agent named. Florida law requires this specificity. Additionally, in 2003, Congress passed **privacy laws known as HIPAA laws**. Your document should include "HIPAA" language to be sure your agent can access any medical and other records.

A Durable Power of Attorney should have **special provisions** such as gifting, doing a Qualified Income Trust, permission to sell real estate etc. **necessary for a Medicaid application**. And although these documents do not expire, **failure to regularly update** them makes them much more likely to be ignored or subject to attack.

Has the family member **not** done "Advance Directives"? No problem - we'll just get a **COURT APPOINTED GUARDIAN** to take care of them for the rest of their life. It won't be too aggravating or expensive for the family!

#5 Not Taking Action!

Remember to have "**The Talk**" with your family. At any age, the family should be aware of your wishes as to death and dying, long term care etc. As we age, we should also be discussing finances. **Failing to make your wishes known creates confusion and stress** for the family. Write it all down and discuss it with the family.

Act Today!

Contact Laurette at

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Consumer's Guide to Medicaid, Asset Protection and Long Term Care.

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