COMMON & COSTLY:

8 Major Estate Planning Mistakes

You Can Easily Avoid

A special report from

SENIOR EDGE LEGAL®

"IT'S YOUR TURN"

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Estate planning is one of the most important financial decisions you'll ever face. Make the proper plans now, and your estate (including your life savings, home, business, and other assets) will be passed on to your loved ones quickly, privately, and at minimal cost.

By contrast, failing to plan correctly is guaranteed to frustrate your family, cost a fortune, and tie up your assets.

There are many potential minefields in estate planning, and this report does not cover all of them—only eight of the most common ones. In our 30-plus years of helping families design intelligent estate plans, these are the ones that we've seen most often.

They also happen to be eight mistakes that can be very expensive.

Ultimately, they can be easily avoided by working with the right estate-planning attorney. Investing a few thousand now can save tens of thousands of dollars down the road—not only for your heirs, but for you as well. If you'd like a free consultation at Senior Edge Legal, call us at 208-344-0375.

MISTAKE 1 – RELYING ON ONLY A WILL FOR YOUR ESTATE PLANNING

Most people know that a Will lets you specify who you want to have your property after you die. But many are surprised to learn what else a Will might do.

- A Will can leave your estate entangled in costly—and public—probate.
- It can be a problem if you're disabled.
- It lacks control for all your assets.
- It can allow a court of law to control assets left to your children.

It's unlikely you're interested in any of these things happening. Here's some elaboration on those particular areas of concern:

- A Will And The Costs, Delays, And Publicity Of Probate. Probate is the court-supervised process of approving your Will, removing your name from titles at your death, and passing on your assets to the persons named in your Will. Because probate is in the local court system, there are court costs and attorneys' fees to be paid. In Idaho, for a single person, it can take up to six months to go through probate, and sometimes more than three years. And, because probate is a public process, anyone can read your Will and learn about your estate. The probate process, not your family, determines how much it will cost, how long it will take, and who will inherit your assets. Many people are surprised to learn that a Trust in a Will (called a Testamentary Trust) does not avoid probate. The Will must be probated before the Testamentary Trust can go into effect.

- You And Your Will If You Become Disabled. A Will goes into effect only at your death. If you become unable to handle your financial affairs (pay bills, make investment decisions, etc.) due to mental or physical incapacity (for example, because of Alzheimer's Disease, stroke, heart attack, or injury), your spouse and other family members cannot automatically step in for you. If you have no other plan in place, you get the State's plan, which result in a court-appointed "conservator" to handle your finances and titled assets. This ongoing court process can be expensive, embarrassing, time consuming, and if you recover, more legal steps need to be taken. Your conservator may not be able to protect assets should you need expensive care.

- A Will does not control all of your assets. Most jointly owned assets and those with beneficiary designations (life insurance and retirement accounts) are not controlled by your Will. When you die, these assets automatically go to the surviving joint owner or person you have named as Beneficiary (assuming, of course, this person is alive, competent, and an adult at that time). This can cause one person to receive more or less than you intended, and can even cause you to unintentionally disinherit someone.

- A Will And Court Control Of Assets Left To Your Minor Children Or Grandchildren. If you leave assets to a minor child or grandchild in your Will, the Court will require a costly conservatorship to "protect" the child's assets until he/she reaches age 18. Including a Trust in your Will can help prevent this, but the Will must go through probate before the Trust can go into effect.

All this being said, it IS possible a Will is the right estate planning tool for you. It isn't something that anyone can determine by taking a stab in the dark. It requires talking to a qualified legal professional who can look at your overall estate picture to help you decide what makes the most sense in your case.

MISTAKE 2 – OWNING ASSETS JOINTLY

Joint ownership is a common way of owning assets. If you are married, you and your spouse probably own many of your assets jointly. Many older parents add an adult son or daughter as a joint owner, thinking it will make things easier when the parent becomes ill or dies.

The kind of joint ownership most people use is called "joint tenants with right of survivorship." Many have come to rely on this kind of joint ownership as an alternative to Wills, primarily to avoid probate. But joint ownership between spouses doesn't really **avoid** probate—it just postpones it. When one joint owner spouse dies, ownership will transfer to the other owner spouse without probate. But when the second owner dies without adding another joint owner (which is usually what happens), the asset must be probated before it can go to the heirs. In Idaho a joint account with a non-spouse does not automatically go to the surviving person.

There are many other problems with joint ownership, including:

- **It Can Be Very Difficult To Remove A Co-Owner.** Putting someone's name on a title is very easy. But, if you decide you want to take someone's name off the title, doing so can be difficult. If your co-owner doesn't agree with your efforts, you could easily end up fighting it in a court of law.

- **Exposure To Your Co-Owner's Creditors And Debts.** When you have a jointly owned asset, a creditor can force a sale of the asset to collect your co-owner's share of the proceeds.

- **You Could End Up With A New Co-Owner: the Court.** If your co-owner becomes incapacitated, the Court could become the new co-owner of your asset. That's because with many assets, especially real estate, all signatures are required to sell or refinance. And if your co-owner is not able to conduct business, only a Court appointee can sign for him/her—even if the ill owner is your spouse.

In some situations, as with Wills, joint ownership MAY be sufficient. In our experience, those cases are few and far between. To avoid the problems of joint ownership and any unintended consequences arising therefrom, a qualified estate-planning attorney is your best resource.

MISTAKE 3 – NOT USING A REVOCABLE TRUST

More and more people are choosing a Revocable Trust over a Will and joint ownership, and with good reason. A Revocable Trust meets the needs of many of today's families better than any other plan, and has far fewer risks.

Similar to a Will, a Revocable Trust is a legal document that lets you specify who you want to receive your assets after you die. But it does much more. Here are just some of the benefits:

- It avoids the costs, delays, and publicity of probate.
- It prevents the Court from taking control of your assets if you become incapacitated.
- It prevents the Court from controlling assets you leave to minor children and grandchildren.
- It can control all of your assets so you can be sure each person receives exactly what you want them to receive with no risk of **unintentional disinheriting.**
- It can protect assets for your children if your surviving spouse should remarry.
- It can include your authorization to protect assets, should you ever need care in a Nursing Home.

Why is it that a Revocable Trust can do all this? When you set up a Revocable Trust, you change the titles of your assets from your name to the name of your Trust, or arrange for the assets with beneficiary designation to automatically drop into your trust at your death. Since you no longer own anything in your name, there is nothing for the courts to control when you die or if you become incapacitated. You do not lose control of your assets—because you control the Trust. You can buy, sell, and enjoy your assets just as you do now.

And because the Trust is **revocable,** you can take your assets out of the Trust at any time.

Revocable Trusts are not new and they are not gimmicks. They have been used successfully for hundreds of years. Even so, some people are reluctant to use a Revocable Trust because they have heard for so long that they should have a Will. But, when they compare the costs and benefits of a Revocable Trust to a Will—and to the risks of joint ownership—most people prefer a Revocable Trust.

Is a Revocable Trust right for your situation? Like any estate planning tool, it has its benefits as well as its limitations. And if you've read through the previous two mistakes, you can easily anticipate our position on this: talking to a qualified estate-planning attorney is the best way to determine its suitability for you.

MISTAKE 4 – LEAVING EVERYTHING DIRECTLY TO YOUR SPOUSE

Most married couples want to make sure the surviving spouse has enough money to last for as long as he or she lives. So they leave everything to each other through their Wills and joint ownership.

But there are some problems with leaving everything to your spouse. Here are just a few potential pitfalls to consider:

- Disinheriting Your Own Children. That's because you have no control over what your spouse does with the assets. He or she could change the Will to leave your assets to a new spouse. Or, if yours is a second marriage, your surviving spouse could change the Will to eliminate the children of your first marriage. Even if your surviving spouse would not intend for a new spouse to inherit anything, the new spouse can force a share of the estate if your surviving spouse dies first.

  A Revocable Trust can avoid these problems. With a Revocable Trust, you can leave all your assets in a Trust for the survivor. The Survivor Trust can provide for your surviving spouse for as long as he/she lives but can require that your children receive what's left at the second death.

  If you are married, to assure your retirement accounts ultimately end up with your children, it is critical to sign a separate document to protect your children's inheritance.

- Bad Investments Or Careless Spending. Some surviving spouses are not capable of handling large amounts of assets, or may be too easily influenced by others. With a Revocable Trust, you can specify who will manage the assets if you die first.

As with any of the other potential costly mistakes described in this report, the best way to determine how you can avoid the problems associated with leaving everything directly to your spouse is by talking to the right lawyer—one with whom you feel comfortable, and who can show a track record of providing sound estate planning advice to others in your specific situation.

MISTAKE 5 – FAILURE TO PROTECT AGAINST THE HIGH COST OF CARE

On the face of it, this may not sound like estate planning. However, it could dramatically impact you, your spouse and your estate—potentially leaving you destitute in your old age. If you're over age 65, the chances are greater than seventy percent (70%) that you will need help with your care before your die. The cost of care in your home can range from $25/per hour, to $10,000 a month in a nursing home. At this rate, a life's savings can be wiped out, particularly for Alzheimer's patients who need long-term care but are otherwise very healthy.

It does no good to have a terrific estate plan if, at the end of the day, there is no estate left. So, as part of your estate plan, you must have some form of nursing home care protection.

By far, the best protection is Long-Term Care Insurance. This insurance is the best protection because it can help you stay at home longer through the "home care option." Most Long-Term Care Insurance policies today give you the option to use your insurance benefit to pay for help to come to your home. Of course, each of us would prefer to stay at home for as long as possible. If you do not already have Long-Term Care Insurance, getting a proposal today will tell you what it would cost. You'll never be any younger (and probably not any healthier) than you are today. Your age and health are the primary determinants of the cost of Long-Term Care Insurance, the cost will never be any lower than it is today.

For some people Long-Term Care Insurance is not available. If that is the case for you, there are two other forms of protection from the high cost of nursing home care. Both involve the government program called Medicaid, which will pay for the cost of care in a nursing home if you qualify.

If you're planning ahead, you should consider an irrevocable Asset Protection Trust. This special Trust puts up two roadblocks that protect your assets and qualify you for Medicaid. First, you must not be Trustee (or manager) of the Irrevocable Trust. You must appoint another person—usually a son or daughter—to act as Trustee for you. Second, you do not have access to these funds. By establishing the Trust at least five years in advance of your need for nursing home care, you can protect many of your assets from the Medicaid spend down.

For someone "on the nursing home doorstep," it may be possible to protect many assets by taking advantage of the Medicaid "transfer rules." But to take advantage of these rules in the future, you must pre-authorize a trusted family member today to get good advice from a Certified Elder Law Attorney regarding how the transfer rules work and what to transfer. (We usually do this with trusts and Financial Power of Attorney.) You want your family member to work with a Certified Elder Law Attorney, because these rules change constantly and you don't want them to risk losing your assets with an illegal transfer.

We know many people who've protected themselves and their assets through astute planning for the potential requirement of nursing home care. For you, the best protection for you situation is consult with the right estate planning attorney.

MISTAKE 6 – LEAVING EVERYTHING TO YOUR CHILDREN OUTRIGHT

You spend your entire life earning money and protecting it. You are careful with living expenses and purchases. You watch for sales and bargains. You may clip coupons. You invest cautiously. And, after you and your spouse die, your children receive everything you owned in one lump inheritance. Now what happens?

It doesn't matter whether you leave your children $10,000 or $10 million. There are several reasons why you may not want your children to receive the entire inheritance all at once. For example:

- Your children may not be responsible or have the skills to handle this amount of money. Will they invest wisely—or will they recklessly spend the assets it took you a lifetime to accumulate? Do they have any bad habits—like gambling or drugs? Do they regularly save from their own earnings now—or do they spend everything they can get their hands on?
- Even if your children are financially responsible, an ex-spouse could end up with your assets as part of a divorce settlement. Or your children could lose the inheritance to creditors or in a lawsuit.
- You may want the inheritance to "stay in the family" if your child dies before using all of the inheritance.
- Assets you leave directly to your children will be included in their estates—and taxed—when they die. Would you simply be giving them a tax problem—or giving even more to Uncle Sam?

Instead of giving your children everything all at once, consider giving it to them in an irrevocable inheritance protection Trust. We refer to that Trust as an "Heirloom Trust." An Heirloom Trust can protect the assets from spouses and creditors, and from irresponsible spending and investing. It also keeps the assets out of your children's estates, which means less for Uncle Sam and more for your grandchildren and future generations.

• MISTAKE 7 – FAILURE TO SHARE YOUR WISHES

Do you have "secrets" you want destroyed after your death? These items may include old correspondence and love letters,, photographs, prescriptions or drugs that you have been covertly taking or anything else that worries you.

Have you made your funeral / burial wishes known in a way that assures your wishes will be carried out?

If you are suffering from a terminal condition irreversible injury, disease or illness do you want your health care agent to assist in ending your life by legal means, or authorize the humane administration of life-terminating drugs or mechanisms, if applicable law permits euthanasia or physician-assisted suicide or move you to jurisdictions that allows assisted suicide, or generally that allow euthanasia or assisted suicide?

Have you created a document stating who is to receive your rings, guns or family heirlooms after your death?

These and many other personal items and choices are addressed in all estate plans prepared by Senior Edge Legal.

MISTAKE 8 – NOT KEEPING YOUR ESTATE PLAN CURRENT

Too many people have a Will or Trust prepared and think that's all they need to do—forever. They put it in a drawer or safe deposit box and never look at it again. The family often discovers much too late that Grandpa left everything to his first wife whom he divorced 30 years ago.

Your estate plan is a "snapshot" of you, your assets, your family situation, and the laws in effect at the time it was prepared. But all these things change and so your estate plan will need to change too.
It's a good idea to review your plan at least once every three years. Generally, it should be changed whenever it no longer does what you want it to do.

Here are a few situations that could prompt a change in your estate plan:

- Your health (or the health of your spouse or another family member) declines
- Your spouse or other family member dies
- You (or a family member) marry or divorce /There is a family birth or adoption
- The value of your assets changes dramatically
- You plan to move to another state or change your residence
- A Successor Trustee or health agents moves, becomes ill or dies
- The laws change

If you do need to change your Trust or Will, contact an attorney. Do not write on your current Trust or Will, as it could make the document invalid. If that happens, your estate would go through probate as if you had no Will or Trust—your assets would be distributed according to the laws in Idaho and any tax planning in your Will or Trust would be useless.

Time Is Of The Essence, And Taking Action Is Key

Our goal in writing this Special Report has been to provide you with accurate and understandable information so you can avoid these costly mistakes. It's now up to you to use this knowledge and turn it into wisdom.

None of us likes to think about our own mortality, which is exactly why so many families are caught off guard and unprepared when incapacity or death strikes.

But proper estate planning is not about dying. It's about acting now to do what's best for you and your family so you can relax, have peace of mind, and get on with living.

At Senior Edge Legal, we have created a proprietary process for people in retirement. It's called **The Estate Planning Program™** because it helps you protect your independence, assets, and family.

All through this document, we've offered a single, recurring piece of advice: consult with a qualified estate-planning attorney to determine the wisest course of action for your specific estate and circumstances.

At Senior Edge Legal, we encourage you to take the first step of meeting with us to decide if we should be working together to secure your future. If you'd like to schedule an appointment, please call **Senior Edge Legal at 208-344-0375**. We will ask you a few questions to see if we are a potential good fit to provide the services that help you accomplish your goals of having s secure future.