

# Common Estate Planning Mistakes, Pitfalls, and Weaknesses

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# COMMON ESTATE PLANNING MISTAKES, PITFALLS, AND WEAKNESSES

## Abstract

Estate planning is a critical process that ensures a client's assets are distributed according to their wishes and that legal and tax implications are properly managed. However, mistakes and oversights during this process can lead to financial losses and legal complications. This white paper addresses common estate planning mistakes, pitfalls, and weaknesses, emphasizing the importance of thorough review, strategic asset disposition, and the use of appropriate legal structures to avoid potential liabilities.

## Introduction

Estate planning is more than the drafting of a will; it encompasses a broad array of legal, financial, and tax considerations. Failing to address these concerns appropriately can lead to significant consequences for both the estate planner and the client. A comprehensive checklist is often used to ensure all relevant issues are covered, but even experienced planners can overlook critical elements. This paper highlights some of the most common errors and pitfalls in estate planning, offering guidance to avoid them.

## Failure to Recommend Necessary Changes to a Will

One of the most frequent mistakes estate planners make is failing to review and recommend necessary changes to a client's will. It is important to ensure that the will:

- Is validly executed under state laws.
- Reflects the client's current objectives and any changes in family or financial circumstances.

Estate planners should be cautious when dealing with mutual wills, as they can create unintended legal obligations and tax consequences, such as disqualifying property from marital deductions or triggering gift tax liability.

## Exhibit 1: Will Checklist

*Key considerations include changes in marital status, health, family structure, asset value, and other life events that may require amendments.*

## Improper Disposition of Assets

Improper asset disposition can lead to both tax and non-tax-related problems. These issues often arise from:

- Improper titling of assets (e.g., joint tenancy ownership).
- Partial intestacy (lack of a residuary clause or contingent beneficiaries). Estate planners must ensure assets are transferred in the right form, and to the right people, using structures like trusts for minors, incapacitated individuals, or those with special needs. Trusts provide more control over asset distribution and offer protection against creditors.

## Improper Titling of Assets

Asset titling determines not only the distribution of assets but also the tax consequences. For instance:

- Joint ownership of real property may unintentionally create a gift tax.
- Income or sale proceeds could result in income tax complications if the titling is incorrect. Estate planners should carefully review the titles of assets to prevent unintended tax liabilities or asset misallocation.

## Improperly Arranged Life Insurance

Life insurance is an essential part of many estate plans, but common mistakes can undermine its effectiveness. These include:

- Inadequate coverage or misalignment of policy types with client needs.
- Incorrect ownership arrangements, such as not using an irrevocable life insurance trust (ILIT) to avoid estate tax inclusion.
- Failure to designate contingent beneficiaries, leading to probate complications. Estate planners must review life insurance policies to ensure they align with tax and estate goals, and that ownership and beneficiary designations are optimized.

## Lack of Estate Liquidity

An estate's ability to cover its liabilities—such as taxes, debts, and administration costs—is crucial. Financial planners must assess the liquidity needs of the estate and ensure that the necessary liquid assets are available to meet these obligations. Failure to do so can result in a forced sale of assets or delays in the estate settlement.

## Failure to Avoid Ancillary Probate

Ancillary probate occurs when real property located in different states must be probated separately, causing delays and additional expenses. To avoid ancillary probate, estate planners can:

- Transfer real property into a trust, such as a revocable living trust, to bypass probate.
- Use other ownership forms that serve as will substitutes, allowing for easier transfer upon death.

## Conclusion

Estate planning requires a holistic approach that goes beyond just preparing a will. Financial planners must address a variety of issues such as asset disposition, titling, insurance arrangements, liquidity needs, and more. A thorough review, proactive changes, and proper structuring can help avoid common pitfalls and ensure the client's wishes are honored without incurring unnecessary tax consequences or legal complications. Estate planners must remain vigilant and update plans regularly to reflect the evolving personal and financial landscape of their clients.

## Recommendations

- Use comprehensive checklists to ensure all aspects of estate planning are addressed.
- Regularly review wills and other legal documents to reflect changes in circumstances.
- Ensure assets are titled appropriately and consider trusts for more complex distributions.
- Ensure life insurance policies are structured to avoid estate taxes and meet liquidity needs.
- Implement strategies to avoid ancillary probate and ensure efficient estate administration.

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