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10 Problems That Could Cost Your Family a Fortune -- and Their Solutions Through Proper Estate Planning

Problem #1: Probate. Probate is the Court-supervised process of passing title and ownership of a deceased person's property to his or her heirs. The process consists of assembling assets, giving notice to creditors, paying bills and taxes, and passing title to property when the judge signs the order. Probate can cost your loved ones a sizeable portion of your estate. The biggest portion of the costs are the fees charged by attorneys and personal representatives for their services for the estate, in addition to filing fees, costs of publication, fees for copies of death certificates, filing and recording fees, bond premiums, appraisals, accounting fees, and so on. Often the fees of attorneys and personal representatives are based on an hourly rate, and while they can tell you what their hourly rate is, they cannot tell you the number of hours their services will take, so they cannot tell you what their total fees will be. Like surgery, probate can be simple and easy, but frequently probate can have very drastic and damaging results. Accordingly, like surgery, because of its uncertainty in terms of both the potential for problems and high costs and fees, probate is something best to prepare for if you can. You can avoid a substantially larger probate process by having an estate planning lawyer review your assets and prepare an estate plan that can minimize this cost substantially, which will result in a much larger distribution to your heirs and beneficiaries.

Problem #2: Creditors. Protect the property you leave to your spouse and children from the claims of their creditors and ex-spouses. This can best be done with proper creditor protection provisions in a Revocable Living Trust.

Problem #3: Income Taxes. A family can lower its overall income taxes by setting up a Family Limited Partnership to own income-producing property. A parent can do this by setting up a Family Limited Partnership and making gifts of limited partnership interests to the other limited partners, normally their children or grandchildren who pay income tax at lower tax rates. A Family Limited Partnership is an excellent tool to shift income to partners who pay taxes at lower rates. It is also an effective way to make gifts and still keep total control of the property owned by the partnership.

Problem #4: Lawsuits. Protect your assets from lawsuits by doing any or all of the following, as appropriate: (1) purchasing an umbrella liability insurance policy, (2) setting up a Family Limited Partnership, (3) setting up a program for

lifetime gifting, (4) setting up a Limited Liability Company, and (5) incorporating. Further, you can protect your children from lawsuits by putting their inheritances into a Discretionary Trust. This is especially important if your children are likely to become professionals subject to potential malpractice actions or, on the other hand, are spendthrifts!

Problem #5: Inexperienced Beneficiaries. Protect your assets from being wasted by young or inexperienced family members. Most beneficiaries spend their entire inheritances in less than two years, regardless of the size of the estate or the heir's socio-economic background. Your lawyer can set up your Family Trust with protective provisions that provide guidance and safeguard your life savings.

Problem #6: Guardianships. Protect your assets from the high costs of incapacity by (1) setting up a Living Trust so you avoid the need for a costly probate guardianship proceeding, (2) drawing up an Advanced Healthcare Directive, and (3) drawing up a Health Care Power of Attorney.

Problem #7: Nursing Home Care. Protect joint assets from the high costs of nursing home care. Buy insurance that covers nursing home care and provides a death benefit that returns the money spent on nursing home care to your heirs.

Problem #8: Unwanted Medical Care. Protect your assets from unwanted and costly medical care by having an Advance Healthcare Directive (Living Will) and Health Care Powers of Attorney that spell out your instructions, including which medical care, treatment and procedures you want -- and which you don't want.

Problem #9: Ineffective Estate Plans. Protect your assets from an ineffective estate plan. Don't depend on pre-printed "cookie cutter" form kits or document preparation services for your estate plan. Contrary to what you may have heard or read, one size does not fit all. You may think you have precisely what you need. But you will never know -- because your family members will have to clean up the mess. You see, after you die, your family members will try to use your documents to settle your estate. And if the documents weren't drafted correctly, the result will be additional expenses and long delays because a protracted probate process will be required to convey title to your assets.

Problem #10: Unqualified Lawyers. Most lawyers specialize in a particular area of practice. Make sure that you choose a well-qualified lawyer who has been engaged in the area of estate planning for a substantial period of time and who can give you a quality product and solid advice. As with everything else, you

get what you pay for. Seek an initial consultation so that you can evaluate the lawyer you have chosen and he can evaluate your situation and offer you only the services you need.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative estate planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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