



THE UNINTENDED CONSEQUENCES OF NOT HAVING AN ESTATE PLAN

Many people believe that estate planning is only for the wealthiest of families. The truth is, everyone can benefit from having an estate plan. In fact, without a plan of your own, you and your loved ones may suffer some costly and emotionally painful consequences. Let's look at some of the unintended consequences of not having an estate plan of your own.



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LACK OF CONTROL OVER WHO WILL RECEIVE YOUR ASSETS AFTER YOU PASS AWAY

If a person passes away without a will or trust, his or her estate assets are distributed according to what is known as intestate succession. As a result, “who gets what” follows strict guidelines, set by each state, with no regard for the actual emotional relationships between you, your spouse, your children, and members of your extended family. For example, someone you care for deeply may end up without any inheritance at all while a relative you barely know might receive the bulk of your estate. To put it bluntly, what you would or would not have wanted is irrelevant to the state. Your assets must be distributed, and the state has devised a formula to do so.

UGLY DISPUTES BETWEEN MEMBERS OF YOUR FAMILY

Even close families sometimes disagree over who should receive what after a family member passes away. These arguments can be about items that have monetary value as well as items that have little to no cash value but great sentimental value for a particular family member, such as a certain chair or a lamp. Without an estate plan that details the distribution of assets, family disputes can quickly become ugly and may even need to be resolved in court. Many families have been torn apart by disputes like these, which could have been avoided entirely by proper planning.

NO CONTROL OVER YOUR MEDICAL CARE AND FINANCIAL AFFAIRS IF YOU BECOME INCAPACITATED

Another reason you need an estate plan is to ensure that a person of your choosing has the authority to make medical and financial decisions on your behalf if you become incapacitated. Without your own plan, someone will petition the court to gain control over your assets and medical care. This could very well be a person you would never have wanted to make important decisions for you. The result? You may not receive the level of medical care you would have wanted. Conversely, you might be subjected to medical procedures you would not have wanted to keep you alive in an end-of-life situation. Similarly, decisions might be made about the management of your assets that you would never have taken on your own.

BURDENING YOUR LOVED ONES WITH THE RESPONSIBILITY OF MAKING TOUGH DECISIONS ABOUT YOUR CARE

As we mentioned above, an estate plan allows you to decide in advance how you would like to be cared for in the event of incapacity or in an end-of-life situation. Without a plan, these decisions will be made either by the state or by members of your family. Making medical decisions for you without knowing what you would have wanted puts an enormous amount of stress on your loved ones, who will already be upset about your illness. Situations like these often lead to infighting and hard feelings among family members that last a lifetime.

LACK OF CONTROL OVER HOW YOUR MINOR CHILDREN WILL BE RAISED IF SOMETHING TERRIBLE HAPPENS TO YOU AND YOUR SPOUSE

If you have minor children, you must also consider what will happen to them if something terrible happens to you and your spouse. An estate plan allows you to name people of your choosing—people you trust—to raise and care for your children if you cannot. Without a plan, the court will decide who has control over your children. The court's decision could lead to your children being raised in a place and manner you never would have wanted.

YOUR HEIRS MAY LOSE THEIR INHERITANCES TO CREDITORS, PREDATORS OR THEIR OWN POOR DECISIONS

If your children, grandchildren or other heirs are not yet mature enough to handle an inheritance on their own, an estate plan allows you to protect their inheritances until they are ready to manage them. Without a plan, however, your heirs will inherit your assets in a lump sum. These assets will then be vulnerable to threats such as creditors, divorce, predators looking to exploit your son or daughter for personal gain, and more. If a loved one suffers from alcohol or drug addiction, an inheritance may even worsen his or her condition. With a proper plan, you can ensure your beneficiaries will not receive their inheritances until they are ready.

YOUR ASSETS COULD GO TO PEOPLE YOU DO NOT WANT TO RECEIVE THEM

Without an estate plan, any number of people can make a claim against your estate. We hear about disputes over the estates of celebrities all the time. These disputes happen to “regular” people too. Even if your desired heirs are able to prevent an “outsider” or estranged family member from actually receiving part of the estate, the court battle could be very expensive and the delays in receiving inheritances both frustrating and financially devastating.

THE TIME-CONSUMING AND EXPENSIVE PROCESS KNOWN AS PROBATE

If you do not have an estate plan, your estate will have to go through probate. In South Dakota, if you have \$50,000 in net property or you have any real estate in your sole name when you pass away, your estate will need to be probated. Depending on the value of the estate, and whether or not there are disputes over estate assets, the probate process can take the minimum required time by law of four months, or even years. Probate can also cost thousands of dollars in legal fees, court costs and other expenses. In addition, probate can be stressful for your loved ones, who are already grieving your loss. And since your loved ones won't be able to receive their inheritances until the probate process is completed, they could experience severe financial problems, such as an inability to make mortgage and car payments, or pay insurance premiums, property taxes and more.

THE IMPORTANCE OF KEEPING YOUR PLAN UP-TO-DATE

Even the most carefully designed estate plans can become vulnerable over time. There are many reasons for this. Income, estate and gift tax laws change constantly. Similar uncertainty surrounds the laws governing asset protection, retirement plan distributions, Medicaid eligibility, family LLCs, trusts, and more.

Your personal and family situation changes over time as well. Loved ones get married and divorced, have children of their own, start businesses, make good investments and foolish ones. Your financial and physical well-being, together with that of your spouse, also changes over time. Planning strategies and tools that made sense five years ago may no longer be the best solutions to meet your current needs and goals.

This is why it is important to keep your plan up-to-date. By reviewing your plan periodically, revisions can be made to address changes in the law and changes within your family. Your plan should be reviewed and updated at least every three years, or any time there is a significant change in your family situation.

