**DANGERS OF DO-IT-YOURSELF ESTATE PLANNING**

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A lot of people try to do their own estate planning. Many are simply trying to save attorney fees. Some are simply do-it-yourself about everything. Most of them do not realize the dangers of do-it-yourself estate planning and it is their beneficiaries that will ultimately pay the price.

Some of do-it-yourselfers search for online forms they like. They then try to navigate through the one-size-fits-all documents to craft something that seems to work. Online forms can be helpful but dangerous. Even Consumer Reports suggests working with an experienced estate planning attorney to make sure documents are correctly prepared.

Online forms are often dangerous by what they omit. A good estate plan should take care of someone during lifetime as well as arrange for distribution of assets when he or she dies. Many using online forms limit their search to wills and possibly trusts. They never think about the need for a power of attorney, a health care surrogate or even a living will. Why is that a problem?

A power of attorney allows someone to take care of contractual matters. It is most often needed when someone is incapacitated. The biggest need for power of attorney during incapacity may be to talk to the insurance company about paying medical bill. A power of attorney may be needed for something as mundane as dealing with the utility company when the utilities are off.

Health care surrogate is empowered to make medical decisions when a person is incapacitated and cannot make those decisions. A living will expresses one’s intent with respect to end-of-life decisions.

If the person does not have a power of attorney, a health care surrogate or even a living will, it may be necessary to have a guardian appointed through court action. Guardianships are expensive and cumbersome and often end up with someone appointed as guardian that the incapacitated person would not have selected. The guardian then makes the decisions about medical care and/or finances.

What about the online will form? If properly completed and signed, it might do the job. The do-it-yourselfer frequently fails to ask what ifs. What happens if one of the beneficiaries is dead? Who gets that person’s distribution? What happens if the person appointed as the personal representative is dead? In many cases, the do-it-yourselfer lists specific assets to go to specific individuals, but by the time the will is needed some of those assets no longer exist. If not properly executed, the will may not even be effective. These are just a few of the problems with do-it-yourself wills.

By now, many of the do-it-yourselfers reading this column are smugly thinking “I didn’t write my own will or use a form, I just set up my assets so they pass direct to the people I want to get them. That way, I avoid probate too.” How did they do that, you might ask? Usually, this approach to the do-it-yourself estate plan involves setting up financial accounts that are payable on death of the owner (POD accounts).

POD accounts work well if the beneficiaries all outlive the account owner. The account owner often wants a beneficiary’s share in the account to go to that beneficiary’s children if the beneficiary does not survive the owner. That is known as per stirpes distribution. Many financial institutions and brokerages do not allow that type of designation because they do not want the risk or liability of tracking down potential recipients. Instead, those accounts are set up so that the balance in the accounts goes to the beneficiaries who survive the owner. The owner may never realize what he or she has done.

After setting up POD accounts, the do-it-yourselfer may then turn to real estate. Wanting to avoid probate, the do-it-yourselfers often put their kids on title as owners with them with right of survivorship. Whoever is alive when the original owner dies will own the real estate. What if the owner wants that child’s children to inherit the dead child’s share? Perhaps the owner will establish tenants in common rather than joint tenants with right of survivorship, as the share of a tenant in common is paying that person’s estate and not the other owner. But now the owner might be dealing with grandchildren and the need to probate a dead child’s estate if the owner wants to sell the property.

Some of these owners will say they never want to sell the property or if the owner wants to sell the property the children on title will cooperate. The children do not always cooperate. The children do not always outlive the owner and sometimes the children have their own problems resulting in liens attaching to the property or other legal issues the owner never worried about.

Even if everything goes as planned, there is a tax problem when the owner puts the children on title. That is considered a gift and the children get their ownership interest for tax purposes as if they bought into the property for what the parent bought into it for (the parent’s basis). When the parent dies and the children sell the property, the children will pay income taxes on the difference between their basis and what the property sells for. If the children inherit the property, they get a step up in basis and avoid that hidden income tax burden.

In Florida and a minority of other states, one can use what is known as a Lady Bird Deed under which the owner retains ownership for life and title and passes to named beneficiaries at death. Drafting these deeds in a manner that actually works requires technical expertise. If not properly drafted, the owner may find that a buyer or mortgage company requires all the beneficiaries in the deeds sign the conveyancing deed or mortgage. That will not be a problem if everyone cooperates, but who will the seller be on IRS reporting forms?

Sometimes the do-it-yourselfer simply picks a child he or she trusts and adds that child to title for everything. The child and the parent have a handshake agreement under which the child will distribute everything to the child’s siblings or otherwise as the parent may direct. The child might not follow the parent’s direction. The siblings might not accept what the child does. The child may need to file a gift tax return for distribution since the child actually owned everything when the parent dies. Did the parent consider these issues before creating the plan?

The do-it-yourself estate plan is a great example of a plan that will work if it really works. In many cases, the plan fails miserably. Avoiding an attorney to save money may seem like a good idea but in the estate planning arena, pennywise can be more than pound foolish.

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