

# The 12 Most Common Estate Planning Mistakes and How to Avoid Them

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**“If you fail to plan, you are planning to fail.”**

**Benjamin Franklin**

My name is Tony Gomes and I am the founder and CEO of Advanced Wealth Management (AWM), a registered investment advisory firm in Florida. At AWM, we partner with estate planning attorneys like Mr. Bradley Magee, who has forty years of estate planning experience and a passion for assisting clients through probate and post-death cases. Based on our combined 60 years of experience assisting clients with their estate planning, wealth management, and cleaning up chaos left behind by those who passed on without having properly planned for their families, we have assembled what we consider being the most important mistakes and lessons that we can provide American families to protect their assets and loved ones. Our goal and hope is that by sharing these essential lessons, we can save more families from these costly mistakes that can otherwise be avoided by initiating a comprehensive wealth management and estate planning in a holistic manner.

I created AWM with a vision and purpose to serve my clients and their heirs for generations. As I explored options for managing my family wealth and those of close friends and partners, I was disappointed by the limitations of existing wealth management approaches, including the lack of integrated and proactive financial advice provided by a team of professionals dedicated to a family's success. I also noticed the minimal access to direct private institutional investments that were accessible to the ultra-wealthy I had met during my venture capital journey. I knew firsthand that the wealthy most times took the “first bite of the apple” on these private investments before they were publicly available. So, I made it my goal to create a firm that will help our clients' progress toward their vision of a successful financial future, with a Boutique Family Office™ mindset and model to deliver a new paradigm for wealth management to the mass affluent, the millionaire-next-door business owners, corporate professionals, physicians, dentists and retirees. A firm that offers individuals and families access to a suite of family office services traditionally only afforded to the ultra-wealthy, focusing relentlessly on personalized wealth management services, providing access to individually tailored investment solutions and institutional-quality private investment opportunities affordably. We only employ and partner with other professionals that share the same level of commitment to excellence, integrity, independence, and delivering exceptional value to our clients.

Working with Advanced Wealth Management means you will get an in-depth look at your entire financial picture as part of our holistic financial planning approach, getting personalized recommendations on how to achieve your financial goals. We regularly check in with our clients to make sure their goals haven't changed and to make sure we are on the right path to financial success.

The difference between implementing a comprehensive legacy and estate planning approach and not planning correctly may be the significant amount of assets protected and peace-of-mind gained that action versus inaction may have on those loved ones that will be affected by your disability or death.

Essentially, these common estate planning mistakes have three major causes:  
Lack of knowledge;  
Lack of preparation; and  
Lack of action

This guide provides you with a summary of the twelve common mistakes we frequently witness families make and some information that will help you avoid these costly mistakes. The motivation to lead you to take those steps will have to come from you. We hope that this summary of common mistakes and lessons will encourage and motivate you to take timely action and begin your estate planning the right way.

### **1. Not Having a Suitable and Current Estate Plan**

Not having a suitable or current estate plan is an all too common occurrence we see with many families. Often, people don't prioritize it as an immediate need. Not having a suitable and current estate plan puts your financial estate, legacy, and heirs at risk.

If you haven't updated your estate plan in over five years, have had a major life event, or haven't yet started an estate plan, then we highly encourage you to take the time to prioritize that today. Advanced Wealth Management offers estate planning as part of our Boutique Family Office™ services.

### **2. Not Properly Planning for a Surviving Spouse**

We believe that one of the biggest missing pieces in most estate plans is the lack of meticulous planning for a surviving spouse. The unexpected death of a spouse can cause more than emotional grief for those approaching or in retirement. It can also drastically affect their retirement income and taxes. Most surviving spouses often wonder whether they will have enough money to cover their additional expenses and offset the reduction in Social Security benefits, pensions, and income annuities. Many surviving spouses aren't aware that even if their income stays the same, their tax liability will increase because of the change in their filing status. We stress test for how the death of a spouse may affect a surviving spouse's living expenses, income sources and create a cushion for the change from filing taxes as married filing jointly to single.

### **3. Not Informing Future Generations of Your Intentions with Your Estate**

Many families may find it difficult to discuss their finances with each other, but this is a critical part of estate planning. Failing to inform future generations of your intentions with your estate ahead of time can create dissension and stress amongst your heirs. Taking the time to discuss your intentions can help ease some of these stresses so that everyone knows what to expect.

### **4. Not Designating Proper Beneficiaries and Keeping Them Up To Date**

For many people, much of their wealth comprises life insurance and retirement benefits. The disposition of these assets at death is directed by beneficiary designation. One of the most common mistakes we find people make is a failure to pay sufficient attention to completing these beneficiary designation forms properly and a failure to keep them current. Beneficiary designations are critically important and must be carefully coordinated with your estate planning documents. Failure to make sure this is done properly across all accounts can be detrimental to your final plans for how you want your assets distributed to your heirs. If you have additional children or grandchildren after you originally designate your beneficiaries or if, God forbid, one of your children passes, or you eventually choose not to gift your estate to one of your beneficiaries for any number of reasons, i.e.

alcohol/drug abuse, criminal activity, etc., you'll want to make sure that you keep your beneficiary designations up to date. You should periodically check to make sure that all of your assets are properly titled. Otherwise, your goal of avoiding probate may not be realized. If you've changed jobs, make sure that the beneficiary designations for your life insurance and retirement benefits are coordinated with your will or trust.

### **5. Not Making Full Use of Estate Exemptions**

There are many ways in which you can plan to lower your estate tax. For example, as of 2022, the annual exclusion for tax-free gifts per person is \$16,000. This means you could start gifting your heirs \$16,000 each every year to lower your total estate tax. Estate tax exemptions are another great way to lower your estate tax bill. Expiring in 2026, the current estate tax exemption is \$12.06 million. This will revert back to \$5.49 million, adjusted for inflation in 2026. If you are able to, you can take advantage of this exemption today by gifting your assets to your heirs now rather than when you pass. This strategy could save your heirs from paying millions in taxes. Of course, every strategy is unique to each individual. We recommend you speak with one of our financial advisers prior to making these decisions to see what works best for you.

### **6. Not Focusing on Tax Reduction or Elimination**

If the total estate of a decedent exceeds a certain amount, federal and state estate taxes are imposed. Even though the threshold level for taxable estates has increased dramatically over the past several years, many estates can be hit with these taxes and the consequences can be severe. One regularly overlooked fact (and it can be a costly mistake) is that the face amount of life insurance payable at death is included in the taxable estate. Where the total estate value exceeds the applicable exemption limits, there are several more advanced planning opportunities (for example, Family Limited Partnerships, Grantor Retained Trusts, Charitable Remainder and Lead Trusts, Spousal Access Trusts and Irrevocable Life Insurance Trusts) that can save thousands, even millions, in estate taxes. These are sophisticated techniques that require the guidance of an experienced estate planning attorney. Estate plan taxes can create unexpected tax consequences for your heirs while also potentially gifting them less after taxes than they expect to receive. Knowing how your estate will be taxed is an important step in estate planning. Careful tax planning prior to these tax implications can help reduce the amount owed in taxes. Working with Advanced Wealth Management, we consider tax implications with every financial decision that is made.

### **7. Not Taking Advantage of the Many Benefits of Using Trusts**

Trusts can provide many tax and non-tax benefits, and can be drafted to give your beneficiaries as much or as little control as you desire. It is almost always better to leave assets in trust rather than outright. The most useful tools for any estate planning attorney are trusts. Trusts come in many varieties, but there is one overriding element: A trust allows you to direct how property will be used following your death. Essentially, there are two ways you can leave property: outright or in trust. If you leave property to someone outright, they can do anything they want with the property after they get it. That means that your spouse can leave it to his or her next spouse. Or, your daughter can leave it to her husband (and not your grandchild) and he may leave it to his next wife. Or, your 21-year-old can spend it on cars, jewelry for his girlfriend, beer, drugs, gambling, etc. By leaving your property in a trust, you can specify in the trust how you want the trust assets to be used during the lifetime of the beneficiary, and to whom you want the rest of the trust to pass upon his or her death. For example, it is one thing to leave your estate to your spouse and another to leave it in trust for your spouse. If you leave it outright to your spouse, then it becomes your spouse's property and

your say in the matter ends upon your death: your spouse can leave it to whomever he or she wants. But if you leave it in trust for your spouse, such a trust might provide that the spouse should receive as much of the income and principal from the trust as he or she needs for health, education, maintenance, and support for life, but further specify that the trust assets will be distributed to your children (or whoever you may designate) at your spouse's death. The main reasons for the appeal of trusts are to protect the inheritance from a failed marriage, lawsuits and creditors, and providing for the inheritance to pass to the child's children upon death. To some of our clients, the prospect of a son-in-law or daughter-in-law getting some or all of their child's inheritance, rather than that child's children, is an awful thought. Properly structured trusts can allow your children to have virtual control over the trust established for their benefit, while also protecting it from a failed marriage and ensuring that the trust will continue at the child's death for your grandchildren.

Unfortunately, many couples that establish and pay to set up a trust fail to fund the trust, thinking that their part in creating the trust is all that is needed. This is not the case. Once the trust is legalized, you then need to fund the trust or make the trust the beneficiary for all your accounts. A trust that is not funded is completely useless.

If you have a Revocable Living Trust, you should periodically make sure that all of your assets are properly titled in the name of the Trust. Otherwise, your goal of avoiding probate may not be realized.

#### **8. Not Including Your Digital Assets**

We live in a digital world, and digital estate planning is becoming even more important. Whether you're 25 or 95, chances are you've left a digital footprint. Not accounting for digital assets, such as passwords, email accounts, bank accounts, crypto assets, domain registrations, blogs, photos, videos, and many other digital assets, is a crucial mistake in estate planning. Be sure to include all your digital assets in your digital estate plan.

#### **9. Not Using Durable Powers of Attorney for Disability Planning**

Not including Durable Powers of Attorney (DPOA) or Healthcare Representatives in your trust or will documents is a critical mistake that some families make. One method of planning for disability is with a DPOA. A DPOA is a document that authorizes someone to act on your behalf. Anyone age 18 or over can prepare and sign a DPOA appointing anyone they choose as their "agent".

Unfortunately, there are many misconceptions about how and when to use a DPOA. Consequential missteps include waiting too long to create one, naming the wrong person, and neglecting to tell the person you've selected.

Many people view estate planning, or "drawing up a will," as something you do in case you die. While that is partially true, it leaves out a big reason for planning your estate—taking measures to ensure that if you become disabled, someone will manage your property and affairs on your behalf and for your benefit. Without proper disability planning, if you become incapacitated, it will probably force your family to institute guardianship proceedings. A guardianship is a lawsuit by your family against you, seeking to have you declared incompetent. Guardianships typically require the hiring of two lawyers and getting two physicians to examine you and report to the Court. It takes time and considerable money to complete and should be avoided at all costs.

#### **10. Not Planning for Final Arrangements**

The passing of a loved one is among the most difficult and stressful moments we all face in life. Not having your final arrangements in order prior to your passing is only going to add additional stress to your loved ones. Having your funeral, burial, hospice, and assisted living arrangements already taken

care of in an end-of-life planning document ensures that your loved ones won't have to make these difficult decisions on their own and allows you to carry these out the way you want.

At Advanced Wealth Management, we provide each of our clients with a Family Legacy Box. The basic idea of a Family Legacy Box is a physical box and may include a computer file when needed, which houses all the vital information and estate planning documents your family will need if something happens to you. Living in an ever-expanding digital world, we sometimes fail to consider that there are many things we need to have physical access to, even though the same information may also be stored on your computers or in the "cloud." If you have a will or other important documents that your loved ones can't find in an unknown safe deposit box, it will not do them much good trying to sort out what needs to be done while fulfilling your wishes. They will also have difficulty accessing what they need from your digital files if they don't know your passwords. In the event of your death or even an emergency, it will be helpful for your loved ones to have access to your most important hard copy documents readily available in one place in your Family Legacy Box to minimize stress for all involved.

Having a Family Legacy Box will be the first benefit you give your loved ones during a time when they may be feeling panicked and emotional while under an extreme amount of tension and stress.

### **11. Not Considering the SECURE Act's Impact on 401k/ IRA assets**

Most estate plans implemented before 2020 that include IRA and 401K accounts are officially outdated because of the SECURE Act. Officially enacted on January 1, 2020, The SECURE Act is now the most extensive retirement reform to impact estate planning since the Pension Protection Act of 2006. Understanding the implications is imperative to creating a quality estate plan. Before this law, all of us were encouraged, year by year, to save for retirement and motivated by tax deductions for our contributions along the way. When we finally retired, we would pay back that tax, but in small increments, over our lifetimes and typically at a lesser tax rate than when we contributed the funds. At death, if there were funds left that we didn't use, they could continue to be withdrawn by our beneficiaries. This strategy, often called the stretch IRA, had the potential to last for decades and advantage many generations. For most of us, the stretch IRA was a lynchpin in our estate-planning strategy that allowed us to save for ourselves and our children and grandchildren. With the SECURE Act, the stretch IRA is gone, and all we are left with is uncertainty. The SECURE Act eliminated the so-called "stretch IRA" for most non-spouse designated beneficiaries and replaced that with a 10-year rule under which all the inherited retirement funds must be withdrawn by the end of the 10th year after death. If you haven't updated your estate plan to account for the impact of the SECURE Act, you may be making a serious mistake. We assist our clients in making the best decisions on how to include IRAs and Roth IRAs as part of their overall estate plan to maximize the transfer values to their heirs.

### **12. Not Taking Timely Action**

Estate planning is one of those things that we tend to put off for another day. After all, it's not pleasant to have to think about what would happen to your loved ones if you died. But, from time to time, this thought comes to mind (as we drive past a serious automobile accident on the Interstate, or as we hear about the sudden death of friends or family). These reminders will usually spur us to make a momentary resolution to contact a lawyer and "finally" get a will drafted. But then weeks go by, and we don't die, and we tell ourselves that we have plenty of time to take care of it later. And the cycle repeats itself, and we never achieve the peace of mind that comes from initiating an estate plan. I'd venture to say that almost every adult person who has died without a will, at one time, intended to prepare an estate plan. They knew it was important, but thought it could wait until later. Then they never got around to it. The result: what they would have wanted to happen after

their death does not happen; part of their estate goes to people they would rather not have it; much of their wealth goes toward taxes and probate costs that could have otherwise been avoided; their hard-earned wealth ends up being squandered by heirs who needed some structure and guidance; their heirs end up fighting one another in costly court disputes; or some other unintended consequence results. This may sound harsh, but a failure to plan is just that—failure. And it is a failure that can be avoided by getting the job done, sooner rather than later. Sure, there might be tough decisions to be made, but any decision is better than none. And once you make these decisions and your plan is written, you can always change it later. The thing I hear most from my clients as they leave my office after having signed their wills and trusts is how relieved they are to have their plan in place, knowing that their wishes will be fulfilled and their loved ones are protected. Usually, it's a relief from the burden they have been carrying around after years of procrastination. The lesson: If you are not sure that your estate plan is properly in place, then it probably isn't, and this causes you some anxiety. The only way to ease that anxiety is to get your estate plan done and keep it up to date. You will find the resulting peace of mind to be well worth the time, effort, and money you invest in the process. There is one way to avoid all the mistakes discussed above: work with an experienced estate planning attorney and put a proper plan into place.

### **How We Can Help:**

Advanced Wealth Management works directly with you to thoroughly evaluate your unique situation and circumstances. We ensure your estate plan is up-to-date and adequately designed to protect your family and loved ones. We can work with your current attorney or refer you to an attorney we collaborate with that specializes in comprehensive estate planning at much lower negotiated prices. Our multi-disciplinary, professional team members include wealth advisors, accountants, estate-planning attorneys, healthcare, advanced insurance planning, and business succession planning experts. The combined and vast experience allows us to identify and implement the most effective estate tax planning tools and strategies.

Our attorney reviewed and approved estate planning process facilitated by our in-house estate-planning technology allows families to easily create their legacy plan at a tremendous value. We can help you build a complete estate plan that includes a Last Will and Testament, Revocable Living Trust, Certification of Trust, Pour-Over Wills, Financial Power of Attorney, and Healthcare Power of Attorney. We also include free, secure cloud storage for any future updates and to facilitate sharing with your loved ones that your affairs are handled before and after your death. Please call 941-451-8512 to schedule a free consultation. If you don't live close to Sarasota or are sheltering in place, we are happy to set up a phone or Zoom call. Visit [www.awmfl.com/estate-planning](http://www.awmfl.com/estate-planning) for more information.