THE GREENING LAW FIRM, P.C.
ATTORNEYS AND COUNSELLORS AT LAW

506 WEST 15TH STREET
AUSTIN, TEXAS 78701
512.476.0888
FAX 512.476.5063

RONALD G. GREENING
JEFFREY M. HARRIS
AUSTIN N. BERTRAND

1601 WILLIAMS DRIVE
GEORGETOWN, TEXAS 78628
512.931.0888
1.800.768.8898

WWW.GREENINGLAWFIRM.COM
RONGREENING@GREENINGLAWFIRM.COM

10 Common Mistakes in Estate Planning

1. Do Nothing

Leave it to the State of Texas to determine what happens to a person's assets upon disability and death. 70+% of adult Americans choose this option. This choice can cost the estate lots of assets and the survivors lots of anguish. The "wrong" people often wind up with the benefit of the estate. Note: Guardianship; Intestate Proceeding; Heirship Proceeding

2. Depend upon a Statutory Durable Power of Attorney

Each year fewer financial institutions accept Powers of Attorney from agents of mentally disabled persons. They do not have to, and they don't. Many folks find this out only after it's too late to do other planning.

3. Adding an adult child's name to a major asset so she can help Dad manage

Potential problems:

Is it a reportable Gift?

Asset protection. May be inaccessible to all if Daughter incurs unpaid judgment against her as result of an automobile accident.

Disposition upon Dad's death. Who owns (owned) the asset? JTWROS? Estate? Will Will handle the asset?

Financial institution discontinues recognition of child upon Dad's mental disability.

4. Bumbled beneficiary designations

Who should be the beneficiary(ies)? Estate; Trust; Spouse; Children; Grandchildren; Charity; 3rd spouse; default provisions.

What restrictions are appropriate?

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5. Financial and Legal Malpractice in Estate Administration of 401k's and IRA's

Is stretch out possible or desirable? Based upon whose life expectancy?
Married couples considerations:
Who owns the asset?
What are possibilities for handling participant's share?
How is non-participant's share to be handled?
401k vs IRA

6. Illusory Incentives–Gravy Train Wrecks

Pay out at 21, 25, 30, and 35 years old. Why get an education? Why get a job? Get a girlfriend or boyfriend or drugs instead.

7. Momma not probating Dad's Will when he dies

Thinking the community property goes to the surviving spouse automatically.
Potential Problems:
Real estate titles clouded.
Real estate may be inadequately insured.
Loss of Dad's estate tax exemption.
Momma wasn't supposed to receive all of Dad's assets.

8. Rely on the Marital Deduction

Leaving all of Dad's assets to Momma will prevent his estate from paying federal estate taxes upon Dad's death, but it will forego the use of his equivalent $2 million estate tax exemption. This exemption could provide significant estate tax savings to their heirs.

9. Failure to review planning every 3 to 5 years or when major life changes occur

When developing an estate plan there are many decisions to be made. Those decisions should be revisited in light of philosophical, family, asset, and law changes.

10. Thinking the family (heirs) will always agree

Expensive and emotionally devastating disputes can be avoided by drafting estate documents with precise instructions on management and distribution of assets.

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BONUS ROUNDS

11. Failing to plan for mental incapacity

The possibility of having a stroke or suffering from dementia increases with age. Family members overseeing older parents may be frustrated that they cannot revise an estate plan to reflect tax or other law changes because the parent no longer has the mental capability to make personal business decisions. Therefore, it may be wise to make provision for someone such as a trust protector to make appropriate changes in the estate plan during disability or even after death.

12. Thinking that drawing up a will is enough

A will is an important first step, but it is not a universal cure.
Other important estate planning tools: Trust, Durable Power of Attorney for Health Care, HIPAA Authorization, and Living Will.

13. Failure to implement a Lifetime Gifting Program

Lifetime gifts can be an effective means to distribute assets to heirs for estate tax and asset protection.

14. Failing to skip a generation on a tax-free basis

If parents leave assets to children who already have sizable estates, the assets may be taxed again when the children die. Parents might consider leaving assets to their grandchildren. Transferring directly to grandchildren may be a better strategy. There are limits on the amount of the transfers due to the Generation Skipping Transfer Tax.

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