

8 Mistakes That Tear Families Apart and Cause Children to Suffer

Mistake #1: Relying on the Maryland State estate plan. If you do not set up an estate plan, upon your death your property will be distributed according to the laws of your last state of residence. Often, the law will require the probate judge to give your property to someone other than the person(s) you would have chosen.

Mistake #2: Relying on a Will. If your estate plan consists only of a Will, your heirs may face many costly problems, such as probate and/or conservatorship proceedings. True, a Will is the most common estate planning tool, but it may not be the best tool to use.

Mistake #3: Relying on Joint Tenancy. Almost everybody owns their bank accounts in Joint Tenancy. Yet Joint Tenancy often causes families horrible legal nightmares. You have many options that are better and safer than owning property in Joint Tenancy, and they come with much less risk.

Mistake #4: Relying on a form kit for your Will or Living Trust. One size does not fit all because no two people or families are alike. Do you know even one family whose concerns are the same as yours? From your family's needs and dynamics -- to personalities and values -- can you imagine any form kit ever being suitable for any family? If you use a form kit, you're asking for problems. The only estate plan you can rely on is one that is custom prepared by a qualified estate planning lawyer.

Mistake #5: Relying on Guardianships. These Court-supervised proceedings for addressing your physical or mental incapacity are costly, time-consuming and horribly burdensome. When you set up a Living Trust and transfer your assets into it, you avoid the need for a guardianship. You also need to put into place up to date Powers of Attorney, Health Care Powers of Attorney and Directives to Physicians.

Mistake #6: Relying on the small estate affidavit procedure as your way of avoiding probate. Most people assume they have fewer assets than they actually have. The small estate exemption that avoids probate is permitted only for estates consisting of less than \$50,000 of personal property.

Mistake #7: Relying on a gifting program as your way of avoiding probate. The law allows you to give away your property at a rate of \$13,000 per person per year. A married couple can give \$26,000 per year to anyone they choose without gift tax consequences. While this is an effective way to reduce the size of your estate, it has two downsides: First, you lose control of the assets you have given away. Second, minor beneficiaries get total control over everything that has been given to them when they turn 21, if the gift is to a uniform transfer to minors act account (UTMA Account). To avoid that problem, certain Trusts would need to be established to receive gifts to minors.

Mistake #8: Relying on the Courts to take care of your child's finances. If you die intestate (with no Will) or with only a Will, and your property passes to your minor child, the Court will put your child's money into a Court-supervised guardianship involving annual accountings to the Court. Naturally, this requires CPAs to prepare accountings, lawyers to file those accountings with the Court, plus filing fees. In addition, since the (State) probate code imposes the most conservative investment standards, this might significantly lower the return on your child's investment. It also means that the Court determines the person who will serve as guardian of the property, who may not be the person you would have chosen.

