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### Personal Business

## WHERE THERE'S A WILL, THERE ARE MISTAKES

Jacqueline Kennedy Onassis made the right moves when it came to estate planning. Many people do not, deterred either by the thought of dying or by the seeming complexity of well-made plans.

Don't be put off. After all, you can't take it with you. If you're not careful, however, you can sure make a mess of leaving it behind, making Uncle Sam richer and your family poorer in the process. "It" is your hard-earned property. The mess is what happens if you make one of these all-too-common estate planning mistakes:

-- Ignoring the whole thing. Seven out of 10 Americans reportedly die without making a will. "The single most important thing you can do," says Stephan Leimberg, professor of taxation and estate planning at The American College in Bryn Mawr, Pa., "is get your papers in order and figure out what you want to do."

Then, follow through. Remember, if you die without a will, you're leaving it up to your state to decide who gets what. If you're married, your assets may be split among your spouse and children. If your children are minors, your spouse would then have to get permission from the court to spend "their" money on their behalf. If you're not married, your closest blood relatives would inherit your worldly possessions--even if you have a close friend you would prefer.

Living trusts, pushed in some quarters as a probate-free substitute for a will, have advantages and disadvantages. A living trust, which is revocable and takes assets out of your name, can be helpful if you live in one of the few states, such as California, with high probate fees or if you want backup should you become incapacitated. A living trust is a good "standby vehicle," says Bill Knox, a trust attorney with Neuberger & Berman in New York, because the trustees you have named can manage your affairs if you cannot. But you won't save on income taxes with a living trust. And, unless all of your assets are owned by the trust, you won't avoid probate. You'll still need a will to take care of any assets not sheltered by the trust at the time of your

death.

You can prepare a legal will yourself, using software programs such as Nolo's WillMaker (about \$40, 800 992-6656). But if your affairs are complicated--if you have remarried or own investment real estate--you would be better off consulting an attorney experienced in estate planning.

Once you draft it, don't file your will and forget it. Make a list of all your assets and liabilities, so that your family won't flounder in ignorance when you're gone. Then keep this list current and review your will every few years, more often if there are changes in tax law or your own family circumstances. Marriage, divorce, newborn children or grandchildren, or a move to another state should all be triggers for updating your will.

-- Using the \$600,000 exemption from federal estate taxes only once. Joint ownership can undermine good estate planning by wasting the second \$600,000 estate exemption otherwise available to the surviving spouse. So can using what Ralph Engel, an attorney with Rosen & Reade in New York, calls a "sweetheart will," in which you leave everything to your spouse. Solution: Divide assets so that each spouse separately owns at least \$600,000, then leave the first \$600,000 in each estate in a bypass or credit shelter trust. The survivor can receive income from the trust, and tap principal, but after the second spouse dies the remainder goes to the children or other designated beneficiaries free from estate tax.

-- Failing to plan specifically for substantial retirement assets. Accumulated retirement funds--individual retirement account, 401(k), or profit-sharing--make up a large portion of the estate for many middle-income Americans. In fact, it can be difficult for some couples to divvy up asset ownership if one spouse has a sizable retirement plan. If you don't recognize the potential tax bite on large plan accumulations, you could wind up losing as much as 85% of your retirement money to a combination of estate, income, and excise taxes.

Estate taxes start at 37% and go up to as much as 60%. An excise tax of 15% applies to so-called excess accumulations at death of \$1.5 million or so as well as to excess distributions during life of more than about \$150,000 a year (the specific amount is a moving target because it depends on your age at the time of death and current Internal Revenue Service interest rate assumptions). Income tax kicks in if your beneficiaries must pull money out of your ira to pay any estate taxes that may be due.

You won't solve the problem by putting retirement money in trust. Engel cites an instance in which a trust was named beneficiary of a six-figure retirement plan. Because of that setup, the surviving wife, who could otherwise have left the money untouched until she reached retirement age, couldn't do an ira rollover, so the money was immediately subject to income and estate tax.

One approach is to begin withdrawing your own retirement money early. Don't wait until the mandated withdrawal age of 70 1/2 if you will be accumulating so much money that you'll be subject to excise tax. Steven Lockwood, president of Lockwood Pension Services in New York, suggests that if you have other assets you can pass to your heirs, you should "plan to deplete your ira by age 90" rather than leaving it in your taxable estate.

-- Holding on to more money than you need. Successful people sometimes don't realize until late in life that the government may get half of what they leave behind. By then, says Knox, "it's too late to make much of a dent in the looming tax losses."

There are multiple solutions here. Start by making what Knox calls "invisible lifetime gifts." These are grants of up to \$10,000 per person per year, as well as direct payments of tuition or medical bills, that are not subject to gift tax. Giving these gifts to your family members while you're alive removes the money--and its subsequent appreciation--from your taxable estate. By helping your children buy a house or your grandchildren attend summer camp, such gifts also let you enjoy the fruits of your generosity along with the recipients.

If your estate is sizable, you may want to consider making larger gifts as well. Giving appreciating assets is the idea here, so that future growth is removed from your taxable estate. The cost basis for determining capital gains on inherited assets is fixed at the time of death, or "stepped up" from the original purchase price, while the cost basis of assets you give during your life is what you paid. Hold on to assets that have already appreciated significantly, otherwise your heirs will lose the benefit of this stepped-up basis at death and owe capital gains when they sell on the entire appreciation from your date of purchase.

Gifts of up to \$10,000 per year (\$20,000 for a married couple) are never subject to tax. On larger gifts, a gift tax return will have to be filed, but the tax itself will not be due until your death. That's when the unified gift and estate tax kicks in on amounts (whether given during life or after death) in excess of approximately \$600,000.

Charitable gifts can also reap large rewards. The American College's Leimberg makes reference to Jacqueline Onassis, who may have sheltered as much as \$90 million out of a \$100 million estate by setting up a charitable lead trust. No one knows exactly how much was in the Onassis estate, but attorneys recognize the astute estate planning.

With a charitable lead trust, a specific sum is set aside. The charities of your choice receive a fixed amount each year, typically based on a percentage of the original amount, for the period of time you specify. At the end of that period, your children or other beneficiaries receive the principal. Because the gift to the children has been deferred, Knox explains, it is discounted for

tax purposes. Furthermore, if the trust's return on investments is higher than anticipated, the excess goes to the children without tax.

Charitable lead trusts are most often used by the very wealthy. Their mirror image, charitable remainder trusts, are more common. With a crt, you receive both an immediate tax deduction and income during your lifetime (and, if you wish, that of your spouse), with the principal then going to charity. No estate taxes are due on amounts left to charity through the trust.

-- Insisting on simplicity, at the expense of what could be significant tax savings. Knox points out that people who have built successful businesses or professional practices are often "impatient with, or even distrustful of, estate planning techniques they can't easily understand." Used to making and controlling their destiny, "they can't bring themselves to do something complicated that doesn't make complete sense to them, no matter how great the tax savings for their families," he says.

One approach is to search out good advisers and then rely on their recommendations. You don't have to understand the technicalities, so long as you understand the consequences in terms of tax savings and your control over your assets.

-- Failing to read documents. No matter how good the recommendations from your advisers, you really do need to peruse all the documents and have your attorney answer any questions that you may have. Mistakes can creep in if you're not paying close attention. Michael Allmon, chairman of the California Society of cpas estate planning committee in Los Angeles, cites a client who made several specific bequests of property, but never noticed that their addresses were incorrectly listed. "We think we can take care of his intent," Allmon says, "but we will have to get the court involved to do so."

-- Thinking that estate planning is only for the rich. If anything, says Leimberg, preparing your will is much more critical for the middle class--or those people with estates under \$1 million. "If a wealthy person loses \$100,000 because of poor or no estate planning, the world won't come to an end," he says. "But it's tough when you have a smaller estate." In other words, most of us can't afford to make any mistakes.

### Five Rules of Estate Planning

#### MAKE A WILL

This might seem obvious, yet 7 of 10 Americans die without one. If you neglect this important piece of business, you're essentially granting your state the right to decide who gets what.

#### USE A BYPASS TRUST IF MARRIED

For sizable estates, the couple divides the assets and each spouse puts up to

\$600,000 in a trust. This ensures that both get to use a \$600,000 federal estate tax exemption.

#### WATCH RETIREMENT ACCUMULATIONS

If your IRA or qualified plan amounts to more than \$1.5 million, you may want to start withdrawals early so you don't bump up against the excise tax on excess accumulations.

#### FIND EXPERT HELP

Refer to self-help software and books. But if your affairs are at all complicated, use an attorney experienced in estate planning. Read everything and ask questions--even experts make mistakes.

#### START "GIFTING" EARLY

If you have enough to live comfortably, giving up to \$10,000 a year (\$20,000 for a married couple) to each child and grandchild can greatly reduce your taxable estate.

#### DATA: BUSINESS WEEK

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