Estate Planning Hazards

Figuratively speaking, life is chock full of road hazards. If we know where they are, then we can avoid them. It is the unknown hazards that are the problem. Just like when you're traveling on an unfamiliar road, it is best to learn from the experiences of those who have been down that road before. For example, if that automobile in front of you swerves to miss a crater in the road, then you may want to do the same. So it is with your estate plan. We can learn a lot by the failures and near misses of others. In that spirit, let's consider two commons sources of dangerous estate planning hazards: *beneficiary designations* and *joint tenancy ownership*.

Beneficiary Designations

Depending on the state in which you live, virtually any titled asset may pass directly upon death simply by adding a beneficiary designation. Likely, many of your assets will pass by a beneficiary designation, to include life insurance, annuities and retirement funds. In addition, the non-probate transfer laws of many states provide for "pay on death" or "transfer on death" designations that work in much the same manner. Consequently, you may even designate beneficiaries for bank accounts, CDs, stocks and other assets.

Arranging for the transfer of your assets at death by beneficiary designations is attractive for several reasons, to include its simplicity and the fact that no attorney is required. While all of this looks smooth on the surface, beneficiary designations can become serious hazards when it comes to your estate planning objectives.

Beneficiary Designations Hazards

For example, did you know that any assets designated to pass directly to your beneficiaries are not subject to the terms of your estate planning legal documents like your will or trust? As a consequence, you may be disinheriting some of your heirs in whole or in part. In addition, any asset protection or special needs planning you created in your will or trust may not take effect as intended. Keeping your beneficiary designations current is vital to the success of your estate plan.

continued on page 2

continued from page 1

Joint Tenancy Ownership

If you own any assets jointly with others, then you are in good company. Joint tenancy is one of the most common forms of asset ownership. In fact, if you own a bank account, brokerage account or perhaps real estate with one or more persons, then chances are quite good that you and they may be joint tenants. The full legal expression for this form of ownership is *Joint Tenants with Rights of Survivorship (JTWROS).*

Although JTWROS is most often found on the title to assets owned by married couples in *common law* states, residents of *community property* states also should understand JTWROS given the mobile nature of our society. In some states a special form of joint ownership called *Tenancy by the Entireties* is available to assets held solely between spouses. There are special "asset protection" aspects to *Tenancy by the Entireties* ownership that can be very beneficial.

When one or more persons hold title to an asset as joint tenants, each of them owns the asset. In most cases, if one joint tenant becomes incapacitated, then the other joint tenant may continue to fully control their JTWROS assets without interference because of their concurrent ownership rights. When one joint tenant dies, the remaining joint tenants continue to own the asset without the need for probate. Ultimately, the sole surviving joint tenant owns the entire asset. This *Right of Survivorship* is one of the attractive legal features of JTWROS.

Not surprisingly, many JTWROS relationships are between family members. It just seems like the natural thing to do and, especially between spouses in a long-term marriage, it reflects the financial partnership of their commitment.

For this reason many widows, widowers and other single adults may add trusted family members or friends as JTWROS to their assets. Nevertheless, as with most things in life, there are hidden hazards when it comes to this form of asset ownership.

Joint Ownership Hazards

While it is true that JTWROS may avoid probate at death, this is true only if there is at least one living joint tenant who is not also incapacitated. To ensure this, however, most people add *non-spouses* as joint tenants.

Whether it is children, siblings or friends, resist the temptation! Once you add a joint tenant to a given asset, he or she also owns the given asset just as you do. What you may have intended merely as a convenience has instead subjected the control, use and enjoyment of such asset to the potential liabilities of each joint tenant. These liabilities may come in many forms through your joint tenant, to include divorces, lawsuits or creditors.

To make matters worse, your plans for the eventual distribution of your assets may be lost through JTWROS ownership. For example, your will or trust may not control assets held in JTWROS. Quite often assets passing to a surviving spouse later end up in JTWROS with a new spouse. That new spouse (and stepchildren) ultimately may receive assets from the previous marriage instead of the children for whom they were originally intended. Disinheritance risks must be carefully considered in every blended family situation.

Closing Thoughts

As with any decisions affecting beneficiary designations and asset titling, be sure to consult with an experienced estate planning attorney. Otherwise, you may fall victim to some extremely unpleasant legal hazards.

Do-It-Yourself Dangers

The current economy has ushered in a "do-it-yourself" era. From changing the oil in cars, to refinishing the backyard deck, to preparing taxes (and endless other projects), Americans are searching the Internet for help to "DIY" and save a buck wherever they can. Still, it seems no one has taken up the challenge to do coronary bypass surgery at home.

So, what about estate planning? No one really wants to hire an attorney to do anything, especially if the project is something you can maybe DIY. But can you truly DIY when it comes to your estate plan? Maybe. On the other hand, maybe not.

The Stakes Are Too High

Sometimes "free" can end up being the most expensive option just when it matters most. After all, your estate plan, by its very nature, is first road-tested when you become incapacitated or die. At that time, your estate plan must clearly convey your written wishes for your loved ones and your assets in a legally enforceable way. Do you really want to give it a shot on your own, given all that is at stake with everyone you love and everything you have?

If you strip threads while trying to fix your sink, then at worst a few hundred dollars spent on a plumber is all you risked by your DIY project. On the other hand, whether you choose to prepare your DIY estate plan with fill-in-the-blank forms at the local office supply store or from an online service that "is not a law firm," you could cause irreparable damage to your estate planning objectives.

Sometimes the damage caused by a DIY "estate plan fail" cannot be fixed with money. Sometimes the damage to your loved ones and your assets can last for generations. Despite their good intentions, people who try to DIY their own estate plan are most vulnerable because they don't know what they don't know about estate planning. For example, great care must be taken when the family is a "blended" family, includes family members with "special needs," or involves a family business, let alone to comply with state-specific "legal requirements" for the estate plan to be valid.

Common Challenges

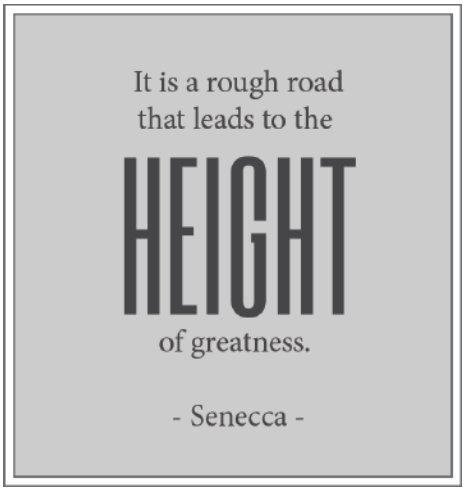
Do you have minor children, loved ones with special needs, a family business, real estate in more than one state, heirs who are less than financially mature or a blended family? These are just a few challenges an experienced estate planning attorney can help you safely navigate.

Are you confident that the fill-in-the-blank or online estate planning forms are current with the law and are state-specific? Did you know state laws can change and vary, sometimes drastically, when it comes to estate planning? If you fail to comply with state-specific requirements, then your entire DIY estate plan may not be worth the paper on which it is printed. Proper estate planning is about much more than producing a pile of paper documents.

Closing Thoughts

With his or her legal education, training and experience, an experienced estate planning attorney not only knows the right answers when it comes to the law, but also the right questions to ask when it comes to matters of the heart. An experienced attorney can help you reach your estate planning objectives and avoid hazards you likely never would have seen coming.

For more information read The Problem with Do-It-Yourself Estate Planning at http://bit.ly/1BZZ1F7 or scan the QR code with your smartphone.



Redkey Gordon Law Corp

www.redkeygordonlaw.com • blog.redkeygordonlaw.com

Jude Redkey, founding partner of Redkey Gordon Law Corp, has practiced personal injury law for 15 years. If someone you know needs a free consultation please feel free to contact our office. Mr. Redkey graduated from University of California, Davis and received his Juris Doctorate from University of Denver, College of Law. Mr. Redkey is admitted to practice law by the State Bar of California and U.S. District Court, Eastern District of California. He is also a Judge Pro Tempore for the El Dorado County Superior Court.

Robert A. Gordon is a JD/MBA graduate from the University of San Francisco and holds an Economics degree with highest honors from the University of California, San Diego. Mr. Gordon focuses primarily on estate planning. Mr. Gordon's detail oriented method for drafting wills and trusts, which he tailors to meet each client's unique situation will ensure the protection of your assets. Whether you are a traditional family, blended family, single parent or individual, your values and assets are worth preserving and passing on to those you love.

To learn more about our firm, we encourage you to visit us online at http://www.redkeygordonlaw.com. At our website you may access our online newsletter, subscribe for free to our monthly e-Newsletter and you will be able to follow us through our social media accounts. Be sure to follow our blog at http://blog.redkeygordonlaw.com.