SULLIVAN

ESTATE PLANNING | INHERITANCE PROTECTION

THE SULLIVAN FIRM, P.C.

Top Ten Estate Planning Mistakes in Massachusetts

Mistake #1 — Believing That Having A Will Allows You To Avoid Probate.

If you create a Will you do not avoid the probate process. In fact, if you have a Will you are guaranteeing that your heirs will have to go through probate. A Will does not go into effect until after you pass away. Once that happens your heirs must file the Will with the probate court to have a judge oversee how the terms of the Will are interpreted. There are ways to simplify the after death process for your heirs and avoid probate including creating and properly funding a Revocable Living Trust.

Mistake #2 — Failing To Understand The Difference Between The Federal Estate Tax And Massachusetts Estate Tax

The Massachusetts estate tax is "decoupled" from the Federal estate tax, which means that your estate could be subject to Massachusetts estate tax even if no Federal estate tax is due. The Federal estate tax exemption is currently $5.25 million and the Massachusetts estate tax exemption amount is $1 million. Most people don't realize that life insurance, while not subject to income tax, is subject to estate taxes. Without proper planning, there could be a very unpleasant surprise for your heirs upon your death. It's a good idea to review your current financial situation to determine the potential exposure to the Massachusetts estate tax and how to minimize it.

Top Ten Estate Planning Mistakes in Massachusetts

Mistake #3 — Believing That After Your Death, Your Children Will Divide Your Personal Property In The Spirit of Cooperation.

Even if you have a Will or a Trust that dictates how your assets are distributed it is oftentimes the division of the tangible personal property that becomes an emotional and adversarial process. Sally doesn't care so much about the 401K, but there is no way she is going to let Mary Ann get Mom's wedding ring and china set. We see this all too often; family members fighting over the "stuff". To minimize the chance of conflict among your beneficiaries, it is wise to create a memorandum or list identifying all of the personal property having monetary or sentimental value and list out who gets what. Sally get's the wedding ring; Mary Ann gets the china set, etc. This will prevent your heirs from refusing to talk to one another and keep the distribution process after your death civil. To give the list legal effect, it should be referenced in your Will or Trust.

Mistake #4 — Believing A Durable Power Of Attorney Continues To Be Effective After Death.

"Durability" in this context refers to the ongoing validity of a power of attorney after the principal becomes incapacitated. For estate planning purposes this is the main reason to create a power of attorney; to have someone you trust make decisions on your behalf once you become mentally incapacitated. However, once you pass away, the person you chose to be your power of attorney loses the ability to make decisions on your behalf because all powers of attorney are immediately revoked upon the death of the principal. After death your estate is created and now the personal representative of your estate makes decisions.

Mistake #5 — Failing To Fund Your Revocable Living Trust.

A revocable living trust can only control those assets to which it holds title. Far too many people spend the time and money to set up a revocable living trust and then fail to rename their assets in the name of that trust. It doesn't matter how fancy your revocable living trust is, you still must rename your assets in the name of your trust for that trust to work. To the extent that assets remain in an individual's name, it may be necessary to initiate a probate proceeding after death to dispose of those assets, even if the individual took the trouble to prepare and sign a trust.

Top Ten Estate Planning Mistakes in Massachusetts

Mistake #6 — Failing To Review Beneficiary Designations And Asset Ownership.

Certain types of assets, such as life insurance policies and IRAs, pass directly to the recipients you specify on your beneficiary designations. Other assets pass by right of survivorship, such as bank accounts or real property held as joint tenants with right of survivorship (see Mistake #7). Assets such as these pass according to the beneficiary designation or the surviving joint tenant, regardless of the provisions of your Will or Trust. For example, if you intend to leave a joint bank account to all of your children but you only designated one child as a joint owner of the account, that child is only under a moral responsibility, not a legal one, to give his or her siblings an equal share of the account upon your death. Therefore, when planning your estate, it is important to review these types of assets to assure that the individuals designated as beneficiaries are those you intend to receive these assets. One way to organize all of your assets is to create a Revocable Living Trust and name the Trust as the beneficiary of your life insurance and IRA accounts (there are major tax consequences if the Trust is not properly written, please see a qualified estate planning attorney for this option).

Mistake #7 — Attempting To Avoid Probate By Jointly Titling Assets.

Even though jointly titling your assets may allow you to avoid probate, the assets will be subject to probate when the second person passes away. It also exposes the assets to various types of risks. These risks include misappropriation of the assets by the joint title holder, loss of part of the assets to creditors of the joint title holder and exposure of the assets to a divorcing spouse of the joint title holder.

Mistake #8 — Believing You Can Wait Until You Are "OLD" To Get An Estate Plan.

How "Old" will you be when you die? If you cannot answer that question, you need an estate plan now. For some people, not having a plan can be a costly mistake. If your estate is worth more than $1 million it will be subject to the Massachusetts estate tax and failure to plan could cost your heirs tens of thousands of dollars. If you have young children, you could be subjecting them to a long drawn out probate and guardianship process as well as failing to protect their inheritance (see Mistake #9). Furthermore, if you have no plan and become incapacitated you are requiring your loved ones to go through court proceedings and untold number of arguments to make decisions regarding your health and finances. And whether you know it or not, if you have no plan the Commonwealth of Massachusetts has one for you.

Top Ten Estate Planning Mistakes in Massachusetts

Mistake #9 — Failing To Plan For Your Minor Child's Inheritance

If the unthinkable happened and you and your spouse passed away, a legal guardian would need to be appointed by the court to oversee your minor child's inheritance. You would have no say in who that guardian would be. As you may know, the appointment process can be time consuming and costly and can prevent your child from being able to use the money right away. The guardian then holds the money for the benefit of the child until the child reaches the age of majority (18 years old in Massachusetts). Your child will receive the full inheritance at 18 years old. If your estate is worth, let's say, a million dollars, then your 18 year old will be inheriting one million dollars outright at the age of 18. That's an 18 year old with a million dollars! People don't always make the best life decisions during this phase of their life. One option to protect your child's inheritance is to create a Revocable Living Trust and have your child receive their inheritance in trust. This allows your minor child to avoid the guardianship process and allows you to choose who you would like to oversee the money and provide specific instructions as to how that money should be spent. It also allows you to control at what age your child has full control over the money. You have the ability to keep the money in trust for the child and protect her from future creditors, divorce, bankruptcy and lawsuits. The bottom line is you can control your children's inheritance but you need to plan ahead for it.

Mistake #10 — Forgetting to Plan for the Succession of Your Business.

When you have your own business, you are often so focused on day-to-day concerns that you fail to plan for what would happen to the business if you had an untimely death. Do you have a family member who might take over the business? Is there a key employee or a partner who will buy it? How will that person afford it? Having a plan for the smooth transition of your business can ensure that your beneficiaries will get top dollar for the business that you built.