THE TEN MOST COMMON MISTAKES IN ESTATE PLANNING

With apologies to David Letterman, below are the top ten mistakes people make in their estate planning, starting with the most crucial (and obvious) and working down from there.

1. No Will: Unfortunately, it happens all the time. Even people with critical health issues simply procrastinate, can't make up their mind, or otherwise fail to make a will. When this happens, the court gets absolutely no personalized direction as to how the person wants his or her estate to be handled. See the separate section describing what happens if you do not have a will.

2. Not Sharing Information: Even with a will, it is very difficult to properly administer an estate if the decedent dies without leaving careful records of his assets, life insurance, etc. It is very important to share financial information with a spouse or family member, and even better to summarize all financial information every three to six months.

3. Put Your Will in a Safe Deposit Box: This creates a classic Catch-22: If you die with your will in a bank safe deposit box, the only person who will likely have access to the box is YOU, and you are now dead. Sure, your personal representative (executor) can get at it eventually, but it is very difficult to get that person **appointed** by the court until you have the original will for filing. The bank won't grant access to the safe deposit box except to an executor appointed by the probate court, but the probate court won't appoint an executor until the original will is produced. Normally, an original copy of the will should be stored at the lawyer's office, or in a fire-proof box.

4. Deathbed Wills: Too often, family members push "deathbed wills" upon loved ones shortly before death. Sometimes the person signing the will is barely able to hold a pen. Unless you can get a firm statement from one or more doctors stating that the person has the mental capacity to make a will, a deathbed will can be questioned in court. A will contest is a bad situation no matter what the outcome, because attorneys fees can eat up the estate.

5. Leaving Money Outright to Minor Children: It is generally a bad practice to make a gift under your will to leave money directly to minor children. Often, the result is that a parent or conservator must hold those funds until the child turns 18, and make a report regarding the status of the funds every year. The best alternative is to make sure any gift to a minor child under a will contains language for a trustee to hold the funds for the child's benefit (health, education, or general welfare), and to distribute the funds when the child is at an appropriate age

selected by you. In the meantime, the trustee can use the funds to pay the child's ongoing expenses.

6. No Health Care Directive: Without a Health Care Directive, the medical staff has no instructions for your medical treatment if you are unable to directly communicate your preference. Do you want to be kept alive on a machine? Do you want heroic but expensive medical techniques to be used to prolong your life? You can make a stated preference on these items and other crucial items within your Health Care Directive, and also appoint a close friend or family member to make crucial decisions on your behalf.

7. No Power of Attorney: A Power of Attorney is necessary so that someone can handle your **financial** affairs if you become mentally incapacitated. Your will may provide great instructions, but is applicable only upon your death. A Health Care Directive applies only with respect to medical issues. A valid Power of Attorney, if properly drafted, can allow your spouse, family member, or close personal friend to act as your attorney-in-fact and transfer certain assets or complete certain transactions which you may not be able to do yourself.

8. Handwritten Edits to Your Will: A will is valid only if it is signed in front of two witnesses. If you make handwritten edits on your original will, the probate court may be faced with a serious dilemma. While the law allows you to cross out certain sections of the will, any portion you add would have to be acknowledged by two witnesses, which is rarely the case. If you need to make changes in a will, always consult an attorney. Handwritten edits on a will **always** cause legal uncertainty.

9. Failure to Use Tax Planning: If your estate is valued at $1,000,000 or more, your estate may be liable for significant federal estate taxes or Minnesota estate taxes. Some people fail to do any tax planning, assuming that their estate has **not** reached that level. However, the IRS uses a broad definition of "estate" for valuation purposes, including your home, other real estate, pension benefits, cash savings, stock investments, and any other asset in your name. **Also** included are proceeds from any life insurance policy owned by you, whether or not the beneficiary is listed as your estate. Traditionally, combined tax rates on assets over $2-3 million have been about 50%, so tax planning is an absolute must for larger estates.

10. Not Coordinating Beneficiary Designations with Will Language: Remember that a person's will applies only to assets which are part of the "probate estate." The will has no impact on beneficiary designations already made for life insurance, qualified retirement plans, military pensions, or other assets where a beneficiary is named. The will also does not change the disposition of real estate or other property held in "joint tenancy;" for those assets, the surviving person

automatically becomes the owner. Always make sure to coordinate the gift of assets under the will with beneficiary designations or joint tenancy arrangements where assets do not pass under the will.

Information provided courtesy of
Douglas P. Radunz, Attorney at Law
2410 Centre Village . 431 South Seventh Street . Minneapolis, Minnesota 55415
612.337.5353 . fax 612.337.5472 . www.radunzlaw.com. radunzlaw@gmail.com