



## Avoid Estate Planning Mistakes

By Thomas J. Vale

Don't make assumptions about how you "think" your estate will be handled when you are gone. See an attorney and make sure you "know" what will happen. Here are some common misconceptions about probate transfers and related matters:

**1. My spouse will inherit everything anyway, I don't need to do estate planning.**

In a first marriage, your spouse is indeed presumed to be your heir. However, you may not avoid the probate process if assets are not titled jointly or with a payable-on-death designation. If there are substantial assets titled solely in the deceased spouse's name, the surviving spouse may be forced to go through a costly probate process when it could have been avoided by simply re-titling assets in joint tenancy.

In the case of a second marriage, children from a prior marriage would share in the deceased spouse's estate if they die intestate (without a will). Individuals in second marriages always need to get legal advice on estate planning matters, and possibly do a marital property agreement, to avoid conflicts between their families when they are gone.

**2. My step-child will inherit equally along with my other children.**

Not unless you include him or her in your will. The rules of intestate succession don't recognize non-biological children as heirs unless they have been legally adopted. If you want a step-child included as a beneficiary of your estate, you must write a will and include him or her as a beneficiary. If you don't want a natural child or adopted child to inherit, you must write a will making that point clear.

**3. Estates smaller than \$1,000,000.00 are exempt from estate tax.**

Estates smaller than \$1,000,000.00 are exempt from federal estate tax. Estates smaller than \$1,000,000.00 but larger than \$675,000.00 may be subject to a Wisconsin estate tax.

The Economic Growth and Tax Relief Reconciliation Act of 2001 phases in increases in the amount exempted from federal estate tax. Wisconsin used to have a "pick up" tax that essentially took a percentage of the federal tax. Wisconsin also used to follow the federal exemption amounts. However, Wisconsin no longer follows the federal exemptions and the Wisconsin exemption from federal estate tax was left at \$675,000.00. If your estate is larger than that amount, it may be subject to Wisconsin estate tax even though it is not subject to federal estate tax.

**4. My old will is good enough, I don't need to change it.**

As circumstances change, your estate planning needs to change to meet your needs. Probate rules change, tax laws change and your personal circumstances change. Births, deaths, marriages and divorces involving family members or your own retirement are all circumstances that may cause you to change your estate planning needs for a few years, you should meet with an attorney to see if you need to make changes and update documents.

**5. A will is the only estate planning document I need.**

A will only controls the disposition of your assets after your death. It does nothing to control the management of your affairs while you are alive. In the event of an accident or serious illness, you should have power of attorney forms in place, one for health care and





one for financial affairs. These documents appoint persons to make health care and financial decisions on your behalf if you are unable to do so. Without power of attorney forms in place, your family would be forced to go through guardianship proceeding in circuit court, which are time consuming and expensive. In some cases, marital property agreements or trusts are also necessary to carry out the individual's estate plan. A will is not the only document you need for a complete estate plan.

**6. It costs too much to do comprehensive estate planning.**

In fact, the opposite is true. It costs too much NOT to do estate planning. Failure to have an adequate estate plan in place is likely to cost your family in terms of time, money and conflict in the future. The cost of doing estate planning is normally relative to your needs. An individual in a first marriage with a modest estate would not have to spend a great deal to put documents in place. But even with larger estates and more complicated issues, for example second marriages or federal estate tax issues, the cost of doing estate planning now is more than offset with the osavings gained from avoiding problems and expenses in the future.

