The Most Common Estate Planning Mistakes (and How to Avoid Them)

Services

Estate Planning

By Thomas J. Cleary on April 22, 2026

With the rise of online everything, even estate planning may seem to be within your reach without turning to an attorney. However, it's easy to cause more problems than you solve if you don't follow sound advice. In this post, learn from a Massachusetts estate planning attorney what the most common estate planning mistakes are and how to avoid them so you can protect your legacy for your loved ones.

Mistake #1: Not Having an Estate Plan at All

When you don't take time to craft an estate plan, then your assets fall under Massachusetts intestacy laws. Dying without a will makes you intestate, and your heirs receive your estate in this order:

- **Spouse and children:** Your spouse gets everything if the children involved are from your shared marriage. If you have children from a previous marriage, then your surviving spouse divides the estate with those children.
- **Spouse and no children:** Your spouse divides the property with your parents, if they are still alive.
- **Children and no spouse:** Your children share the assets among themselves.
- **No spouse and no children:** Your parents inherit your estate, and if they are deceased, your siblings share everything. If you have no siblings, then your next of kin inherits, under MGL Chapter 190B § 2-103(4).
- **No takers:** If you have no family member alive to claim your estate, the property reverts to the Commonwealth or the Massachusetts veteran homes if you served in the military.

Leaving no will or estate plan means your heirs may not get what you want them to receive. Even worse, your minor children may go to family members you would not choose, which you can avoid by naming a guardian in your estate plan.

Mistake #2: Failing to Update Your Estate Plan

Once you create your estate documents, you must update your plan as you experience major life events. Marriage, divorce, birth of children, and increasing your wealth are all reasons to review your estate plan and ensure it meets your current goals. You can add new beneficiary designations to trusts, change the balance for distribution of your assets, and assign powers of attorney to trusted advisors.

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Mistake #3: Not Planning for Incapacity

No matter how healthy you are, accidents and unexpected illness can leave you unable to make your own decisions. A crucial part of an estate plan is writing an advance healthcare directive or living will. By naming a proxy agent to handle your medical decisions and another for your financial affairs, you can protect your health and assets if you lose the capacity to handle them. Once you recover, you take control again.

Mistake #4: Improper or Incomplete Beneficiary Designations

When building a comprehensive estate plan, you must choose beneficiaries for your retirement accounts and life insurance proceeds. You'll also need to name beneficiaries if you create a trust, and many people even select someone to take over their social media accounts when they pass away. If you don't follow the right procedures, your family members may find themselves locked out of receiving the assets they expected.

Mistake #5: Assuming a Will Avoids Probate

Writing a will allows you to distribute most of your property to your heirs, but it doesn't mean they won't have to deal with probate court. Probate is the process by which the Commonwealth assesses tax and transfers property after you die. A will can only protect so much, and anything that isn't jointly owned with a spouse or held in a trust will go through the probate court, including bank accounts and insurance policies without named beneficiaries.

Mistake #6: Not Funding Your Trust

When you create a trust as part of your estate planning documents, you must name a trustee to administer it once you're gone, and you must fund it with money or property. If you fail to transfer ownership of the assets before you die, the trust has nothing to distribute to its beneficiaries. If the assets are still in your name when you pass away and not distributed in your will, they will pass through probate.

Mistake #7: Choosing the Wrong Executor or Trustee

According to MGL c. 190B, § 1-201, your trustee must be 18 or older and of sound mind. They should also have the character and skills to faithfully execute the trust terms and uphold their fiduciary duty to the trust and its beneficiaries. They must be "prudent investors" as described by the Massachusetts Uniform Trust Code (MUTC), Chapter 203E.

Choosing someone who won't honor the trust terms or your wishes puts the trust in legal jeopardy from beneficiary disputes. They can petition the court to remove the trustee and name someone else.

Mistake #8: Ignoring Tax Implications

Ideally, estate plans can help your heirs avoid the state estate tax, federal estate tax, and potential creditor claims. You must take time to consider these when first consulting with your

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estate planning attorney. Even if you address them from the outset, it's wise to revisit them when updating your estate plan, since new tax laws could affect the outcome.

Mistake #9: Failing to Protect Minor Children

If you don't already have children, you must immediately update your estate plan as soon as they join your family. Anyone can fall victim to illness or injury, and you must name guardians for your children in case their other parent also passes away. If you don't choose a guardian in your will, the family court can appoint someone who may not adhere to your wishes for raising your children.

Mistake #10: Overlooking Digital Assets

Many people jumped into the crypto and digital currency market as a way of increasing wealth over time. However, the law has struggled to stay current with how to manage these assets when someone passes away. Treat them like any other valuable commodity and include them as part of a trust or distribute them in your will.

Mistake #11: Not Planning for Long-Term Care

Planning for your later years and medical needs can be difficult, especially if you don't have family members who can be caregivers. Through an estate plan, you can establish a trust that meets the requirements for MassHealth/Medicaid long-term care benefits without jeopardizing your eligibility or dramatically reducing your wealth.

Mistake #12: DIY Estate Planning

Many websites promise a quick and inexpensive way to DIY your estate plan, but there are many pitfalls. The boilerplate forms they use may not comply with Massachusetts law, or may leave your heirs open to unexpected tax burdens if the documents are out-of-date. Unfortunately, it's your family members who will probably be the ones to discover that an online estate plan didn't provide them the security you intended.

How to Avoid These Estate Planning Mistakes

The best way to avoid these mistakes is to meet with an estate planning attorney with a strong background in Massachusetts estate law. They can tailor your plan to your specific circumstances and goals, including accommodating complicated family relationships. They will also work with you as you experience important changes that warrant updates to your plan.

When You Should Update Your Estate Plan

The most common situations when you should update your estate plan include the following:

- Marriage
- Divorce
- Birth or adoption of a child

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- Children's marriage or divorce
- Buying, selling, or building a business
- Inheriting assets or winning a lottery
- Preparing for long-term care

By keeping your documents up to date, you can help your loved ones avoid estate disputes and challenges to your will. Crafting and maintaining your plan protects your peace of mind and their future after you're gone.

Speak With an Experienced Massachusetts Estate Planning Attorney

At Cohen Cleary, P.C., we are by your side for every step of the estate planning process, from writing your will to understanding common issues with trusts. To speak with an experienced Massachusetts estate planning attorney, contact us to arrange a consultation.

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