



McClelland, Jones,
Lyons, Lacey & Williams
ATTORNEYS AT LAW

NEWSLETTER

1901 South Harbor City Blvd., Suite 500 / Melbourne, FL 32901 / P: 321.984.2700 / F: 321.723.4092 / W: www.mjlandl.com

Don't Make These 5 Mistakes

This is the first part of a two-part article which will alert readers to changes they may need to make to their own estate plans. While not having any estate plan in the first place is the greatest mistake, this article assumes the reader has already adopted some form of Will or Trust Agreement. While the mistakes described below and in the next article can result in added financial costs, their impact on the lives of children can be even greater.

MISTAKE #1 – PARENTS WHO FAIL TO ESTABLISH TRUST PROTECTION FOR THEIR CHILDREN

Most people adopt their first Wills in order to designate legal guardians for their minor children. Unfortunately, the authority of a legal guardian terminates when a child attains age 18. At that same age, a child may also gain unrestricted control of their inheritance despite their lack of maturity or the wrongful influence of outside parties at that time. Parents can and should prevent this mistake by providing in their estate plan for the continued trust control of a child's inheritance until the child's education is completed

and the child has attained a more mature age.

MISTAKE #2 – GRANDPARENTS WHO FAIL TO ESTABLISH STANDBY TRUST PROTECTION FOR THEIR GRANDCHILDREN

The typical Will or Trust Agreement provides that the inheritance due a deceased child shall instead be distributed to the surviving issue of that child. In the event one of their children later dies, grandparents often fail to provide the same trust protection for their grandchildren as recommended above. This mistake by the grandparents often involves an even larger inheritance than the grandchild may receive from their deceased parent and could also result in the control of a grandchild's inheritance being managed by in-laws or non-family members.

MISTAKE #3 – CREATING UNEQUAL TREATMENT BY PROVIDING EQUAL SHARES TO CHILDREN

The age spread between the oldest and youngest children in a family often ranges from 5 to 15 years. Even when trust protection is provided to prevent a child from inheriting

at age 18, an even worse result can occur if each child's share is made equal without regard to each child's age. For example, the three surviving children of the Jones family are ages 23, 18 and 12 at the time of their parents' death. The estate plan of Mr. and Mrs. Jones provides for equal division among the children at their death, followed by distribution as each child attains age 23. Until distribution, each child's separate share can be used in the discretion of the Trustee toward that child's support, education and medical care. While Mr. and Mrs. Jones never intended such a result, the older child (whose college education has already been provided by the parents) will receive a full one-third share, the middle child will likely spend all or most of their share in order to complete college, while the youngest child may exhaust their share and never go to college due to lack of funds. This mistake can be prevented by providing trust protection and equal division of assets only after the youngest child has received the same opportunities as each other child (e.g., until the youngest child attains age 22). Until

that time, the Trustee can provide support to each of the children according to their needs from time to time (not necessarily in equal amounts) and as the parents would do themselves if living. Once the remaining assets are divided after the youngest child attains the designated age, distribution of each child's remaining share will occur at such later age of maturity as designated by the parents.

MISTAKE #4 – PARENTS WHO FAIL TO TREAT DIFFERENT CHILDREN DIFFERENTLY

Most parents love their children equally and treat their children equally in their estate plans. The reality in many cases is that once all of the children have reached adulthood, they have achieved different levels of maturity, career and marital success. While parents with a disabled child usually provide special trust protection for that child,

the same parents often fail to protect the inheritance of those children threatened by creditors, broken marriages or bad lifestyles. Many options exist for parents to provide all or some of their children with added trust protection and should be discussed with their advisors.

MISTAKE #5 – PICKING THE WRONG TRUSTEE

In selecting a legal guardian who may become the caregiver, mentor and substitute parent for a minor child, my advice has always been to “let your heart rule your head.” In selecting a trustee to manage a child's inheritance, make investment decisions and say “no” when necessary, you should instead “let your head rule your heart.” The family member or friend, who may be best choice as legal guardian, may be unqualified or overwhelmed with the responsibility of also being trustee. Parents and grandparents

alike should consider designating an independent and qualified investment firm or other financial institution to serve as trustee or trust advisor and made responsible for investment management, bill paying and recordkeeping. This is especially important in trust protection arrangements that may last for many years and beyond the lifetimes of friends or family members. When an independent and qualified trustee is designated, I recommend a friend or family member be provided the authority to replace that trustee with another investment firm or financial institution if circumstances or personnel later change. The second part of this article will cover other common estate planning mistakes, including, purchasing life insurance, designating beneficiaries and using joint ownership.

To read the entire article please visit our blog at www.mjlandl.com.

Proactive Planning in a Time of Crisis AND to Avoid Crisis

By Serena Brock, CEO of Avenue HomeCare

We hear so much about pre-planning, asset protection, financial advisors, estate planning and healthcare planning. Do you really understand what it means to you and your family? Do you think it is only for those who are wealthy?

Proactive planning is important in all aspects of our lives from long-term wishes to short-term daily goals. There is good reason for statements such as ‘plan your work and work your plan.’ Having a strategic life plan is even more critical today than ever.

As a home care agency owner and a national speaker on the importance of pre-planning, I have had firsthand knowledge and experience of what

can happen without a plan. Here is how you can help your friends, colleagues and loved ones consider the importance of planning:

FAMILY MATTERS

There is no time like the present to have those ‘uncomfortable discussions.’ Take a proactive approach to ensuring that the financial and health related areas are observed and planned for. Make sure that your mom and dad have their protection plan in place and updated. Never assume that it is. Protect your own family and assets. Take the time, yes and the costs associated with obtaining professional advice from an estate planning or elder

law attorney, financial advisor and a healthcare professional. Protection and planning includes preparation for aging, changes in medical condition as well as the preferred primary residence. Aging in place within home care assistance verses a stay in a nursing home will vary in costs and in the life plan.

WEALTH MANAGEMENT

Wealth management is for all of us, regardless of Net worth. This is estate planning and what that means is ensuring that the disposition of your assets during life and after death is handled in the manner in which you want it to be. Of course,



The Free Bridge

“I live in Alexandria, Virginia. Near the Supreme Court chamber is a toll bridge across the Potomac. When in a rush I pay the dollar toll and get home early. However, I usually drive a free bridge outside the downtown section of the city, and cross the Potomac on a free bridge. The bridge was placed outside the downtown Washington D.C. area to serve a useful social service: getting drivers to drive the extra mile to help alleviate congestion during rush hour. If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion. If, however, I drive the extra mile and drive outside the city of Washington, I am using a legitimate, logical and suitable method of tax avoidance, and I am performing a useful social service by doing so. For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists.”

- **U.S. Supreme Court Justice Louis D. Brandeis**

Familiar Tragedy With Nursing Homes

One of the biggest tragedies I see as an Elder Law attorney in Melbourne, Florida is when a family fails to plan for nursing home costs. A family will either utilize all the assets of their loved one to pay for nursing home costs or transfer assets in attempts to become Medicaid eligible. Unfortunately, both tend to lead to disastrous results. Why does this

happen? Few people know that the “free bridge” even exists.

The Medicaid laws in Florida are very complex. If an applicant for Medicaid does not meet the asset test (less than \$2,000 for an individual, less than \$104,400 for a married person whose spouse is applying for Medicaid), then the assets must be “spent down.” At our

firm, we counsel clients in utilizing the Medicaid laws to preserve the assets of the family so that it is all not lost to pay for nursing home costs. The “free bridge” does exist and the attorneys in McClelland, Jones, Lyons, Lacey & Williams, LLC can assist families in using legitimate, logical and suitable methods to find it.



cont. from page 2

proper planning will help you avoid complicated and unnecessary tax implications, lost value in securities, real estate and other assets. Gifting and transferring your assets is not as simple as it once was or may seem. Professional advice from an estate planning or elder law attorney can save you and your family from losing the assets that you have worked so hard to achieve.

HEALTH CARE PLANNING

It is no secret that there will not be government funds to support our aging and sandwich generation. It is up to each one of us, as individuals to plan for and protect our needs for health care. What that means to you is purchasing and/

or reviewing your current medical and supplemental insurance plans. Don't assume that a long-term care insurance plan purchased years ago will cover your aging needs of care. Review the particulars of the policy. Does it illustrate home care? What level of service? For what duration, daily, monthly? Is there a maximum? If your wish is to age in place, take the appropriate steps to consider your aging needs such as assistance with your activities of daily living, financial management of regular tasks such as bill paying and considerations of facing a decline in health such as needs for nursing care. An attorney can explain and help you with your living will, power of attorney and healthcare directives.

It is an important step that must be considered.

ALTERNATIVE OPTIONS & RESOURCES

Depending on your situation, there may be assistance available for you. Benefits such as the Veterans Aide and Attendance Special Benefit provide a monthly amount to cover home care. Without knowing what resources are available, you may be missing out on key financial and caring support.

Don't allow our current economic instability to cloud your better judgment. You can protect yourself, your loved ones and your hard earned assets. With the proper planning you will benefit from immediate relief and the peace of mind you deserve.

What's New? Check out our upcoming FREE June, July & August Workshops. Call for dates and times at 321.984.2700 and reserve your seat today!