



STEVEN ANDREW JACKSON

Attorney and Counsellor at Law

One North Pack Square, Suite 306, Asheville, NC 28801 (828) 252-7300 www.stevenandrewjackson.com

Why a Will is NOT an Estate Plan

aka

FIVE COMMON ESTATE PLANNING MISTAKES

You've worked a lifetime to build your financial and personal assets. You create a Last Will and Testament and consider yourself done.... Not so.

A Will is NOT an Estate Plan unless you've considered:

1. DID YOU KNOW A WILL FORCES YOUR ASSETS THROUGH PROBATE COURT?

A Will forces the assets titled in your name through Probate Court. You can even have to go through Probate Courts in different states if you have assets in different states. This is not a benefit as the Probate Court in North Carolina can charge "Court Costs" of up to \$6,000.00 per person or \$12,000.00 for a couple. "Administrative Fees" can eat up five to seven percent (5%-7%) of your estate. That is \$70,000.00 per million. The average time to go through Probate Court is eighteen months to two years. All of your assets in Probate Court are public record and open for anyone snooping. A Will doesn't control jointly owned assets or assets with beneficiary designations.

2. A WILL DOES NOT PLAN FOR MENTAL DISABILITY

A Will only comes into effect after you die and someone starts to move your Will through Probate Court. You are six times more likely to become mentally disabled than you are to die in a given year. Dementia, stroke, accident, and Alzheimer's are some of the ways we lose ability to handle our own affairs. A general Durable Power of Attorney is a blank check. If I have your Power of Attorney, I can sell your car, house, stocks, and take your bank account. I don't have to use them for your benefit as there are no instructions or reporting requirements. With a well drafted Trust, by a well-qualified Estate Planning Attorney, who hears and understands your concerns and goals, you can plan for Mental Disability.

Do you want to stay home as long as possible? If you have to be in a facility, where do you want to be? Who do you want to choose the facility? Think about and plan for these possibilities.

If you don't plan properly for these possibilities, a Probate Court may end up making these decisions, instead of your family. Also, the Federal Medical Privacy laws may preclude the doctors from even talking to your loved ones about your care.

3. A WILL DOES NOT PROVIDE LEGAL AUTHORITY TO AUTHORIZE MEDICAL TREATMENT

Your loved ones need medical/legal authority to authorize medical treatment if you cannot. You also need this medical/legal authority to be able to cross State lines well.

Your loved ones need to be able to obtain information about your medical condition. With the federal Privacy Laws you must grant that authority in the proper legal way for the loved ones to get that vital information

You must have established proper legal authority to allow you to be taken off of the ventilator if you are brain dead and not coming back. If this isn't properly and legally done ahead of time it may be very difficult, if not impossible, to do this after the fact.

4. NOT PROTECTING YOUR ASSETS FROM LAWSUITS

In these times, people will file lawsuits quickly, even if it seems there is no basis for one. If you own your own business, are a doctor, lawyer, developer, dentist, or are involved in a car wreck, you could become the target of a lawsuit. We can do a number of things to protect your assets while you are alive in the event a lawsuit judgment is entered against you. These include certain Protective Trusts—either here in the U.S. or offshore—or by creating certain types of Protective Entities here in the U.S.—all to protect what you own. These can be very effective.

You can protect the assets you leave your loved ones by inheritance through properly drafted Protective Trusts with less complexity than the Domestic Asset Protection Trusts, Offshore Trusts, or Protective Entities.

5. NOT KEEPING YOUR ESTATE PLAN CURRENT

We know three (3) things will change:

- (a) The law will change both federally and in the state legislature. It often changes every time they meet. The budget battles will logically lead to tax law changes. We just don't know what they will look like. And regardless of what laws are implemented, we know they will change. History teaches us this.
- (b) What you own will change. We buy and sell cars and houses. Banks merge and take each other over. Twenty years ago, there wasn't a Dell Computer Stock. Twenty years from now, there may not be one.
- (c) Your relationships will change. You may have not met the best friend of your life yet. Relationships fade with people moving, interests changing, and conflict. We also have the opportunity for starting new relationships every day. Since the law, what you own, and your relationships are constantly moving, you need to make sure your Estate Plan is current with the law, controls what you own, and the right people are in the right roles at the right time.

6. PROCRASTINATION

We all think "I can do that tomorrow." What if you tomorrow is radically different than today? What if you wake up in intensive care or don't wake up at all? I believe we all hang by a thin thread to life. Who knows when that life will change?

Excellent Estate Planning is a necessity, not a luxury. None of us is getting out of this life unscarred or without an ending. Don't leave your affairs in chaos for your loved ones to try to scramble from their busy lives to try to fix. Do the excellent Estate Planning while you are clear minded and healthy. While you can. Then keep it up to date as set out in #5 above.

BONUS MISTAKE - NOT PLANNING FOR TAXES

Everything you own, that has your name on it or that you control is part of your estate. That includes the life insurance, retirement account, CDs, investments, bank accounts, land, the farm, your house, vehicles, trailers, boats, campers, the tools, jewelry, cash, and even the dog. Plus whatever I failed to mention.

The taxes that your assets may be subject to include income taxes, capital gains taxes, property taxes and possibly estate taxes. How your assets are left to your loved ones could cause those inheriting what you own to incur unnecessary taxes, on top of unnecessary Probate Costs.