5 Biggest Mistakes Other Advisors Make

By Jean Ann Dorrell

In my 25 years in the insurance and annuity industry, I have seen all sorts of financial mistakes, a lot of which have been made by other advisors and attorneys of my clients prior to them arriving at Senior Financial Security, Inc. These are some of the biggest, and most common, mistakes I have seen to date.

1) **Naming your trust as primary or contingent beneficiary of your retirement accounts, annuities and life insurance**

For retirement accounts, investors are given the opportunity to name both primary and contingent beneficiaries on their accounts. Since retirement accounts, such as an IRA, 401(k), Roth IRA, 403(b), pass by way of contract (to named beneficiaries), the probate process and attorneys needed for estate settlement are avoided for the inheritance of these particular accounts. There are several potential issues with naming your trust as a primary or contingent beneficiary of your retirement accounts.

IRS publication 590 states only individuals may be considered “designated beneficiaries” by the IRS for purposes of taking advantage of the stretch IRA provisions.[1] A person who is not an individual, such as a trust, may not be a designated beneficiary. If a person other than an individual is named as a beneficiary of the trust, then the IRA is treated as having no designated beneficiary. Since a trust is not a living, breathing human being, it does not have a life expectancy. Therefore, the IRA would be considered to have no named beneficiary, and thus the entire IRA would be required to be distributed within five years of the date of death of the IRA owner (if the owner had not yet reached the age of 70½) or over the remaining life expectancy of the IRA owner (if the owner had reached the age of 70½). The tax ramifications of this can be outrageous!

Bear in mind, an attorney likes for clients to use the trust as a “catch all,” thus they get paid on the entire estate's assets. With so much money in retirement accounts, annuities and life insurance, it is estimated that during the next 10 years, a trillion dollars will pass through these

[1] A pass-through trust may qualify.

assets to the next generation – too large an amount for the attorneys to miss out on! All greed aside though, I believe most of them make these mistakes more out of ignorance than greed.

If an attorney who draws up your trust isn't a tax attorney as well (rare occasion, but it does happen maybe 10 percent of the time), most likely he or she does not know the tax ramifications to the client's heirs, of including the life insurance, annuities and retirement accounts to pass through their revocable living trust. Not to mention, annuities and life insurance have far more creditor protection if passing directly to an heir than through a trust, which in many cases has no creditor protection.

For example, your child heir is 50 and followed your advice to get a good stable job with a pension and benefits right out of college at 22. The child gives nearly 30 working years to this company only to be downsized, have their pension go bankrupt and now be 50 and unemployable (unless they want to work the drive through at McDonalds). And, most likely has a mortgage on a home that they may not be able to pay for.

Now factor in that they inherit a retirement account, annuities and life insurance through a trust from you and your spouse at the same time they are being foreclosed on their home, going through a divorce or incurring some type of traffic accident where they are sued, just to name a few examples. All of the creditor protection those assets come with naturally, is LOST. The Supreme Court ruled in 2014 that Inherited IRAs are not protected by creditors in these scenarios.

When I ask my clientele what they are most concerned about when it comes to their children, this is it. As for making this mistake, people are just uninformed in these areas and follow either what the attorney says or what the client asks for, i.e. "my attorney said to put everything in my trust."

I have clients coming in asking this as well, but that is when I educate them on these dangers. On some occasions, we even call their attorney and ask if they are aware of these dangers. Once made aware, the attorney almost always agrees that these assets should pass outside the trust. I find the attorneys don't do any "discovery" when recommending a trust to a potential client. It's more or less a blanket recommendation these days, with very little reasoning behind it. Ask yourself, “Would my attorney recognize me if we saw each other outside of his or her office?”

This mistake is the most common and the most egregious, and we are seeing families suing law firms now because of it.

2) **Not asking or getting for your clients and their heirs, copies of the beneficiary pages to those assets passing outside the trust**

There are many assets that typically do not pass under the terms of a trust or will (jointly owned assets, life insurance policy proceeds, retirement plan accounts, payable-on-death bank accounts, etc.). Instead they go directly to the beneficiary named on these accounts. These beneficiary pages/forms are sometimes the only form of proof the person was named. These

forms also prevent the “pour-over” will of the trust from scooping up these assets and bringing them into the trust anyway, which mandates probate.

Many people who make a living trust also make what’s called a “pour-over” will. This kind of will is designed to take any assets that pass through the will, and “pour” them into the trust. That way, the terms of the trust govern who inherits all the deceased person’s assets, and gives the trustee control over all the assets. With a pour-over will, you can funnel into the trust any assets that the settler intended to transfer to the trust but didn’t, or assets acquired after the trust was created. Therefore, if the beneficiary has no proof they were named, the assets could be brought back into the trust, but not before going through probate!

So in other words, you may have been smart or gotten the right advice to leave certain assets out, but the “pour-over” will might bring these assets back into the trust upon your passing anyway because your heirs had no proof you named them on a beneficiary form.

It is important to note that large financial institutions routinely shred beneficiary forms once they merge or change names. And they do so without informing their clientele to fill out a new form. Besides...who benefits if the monies aren't paid out right away? The Institution! They freeze the account for your heirs but they get to keep using your monies!

3) Failing to account for the death or disability of a child, nursing home and special needs situations

These situations require additional provisions, documents and care, so it is important to make sure they are handled properly (i.e. Supplemental Security Income (SSI), Special Needs Trust (SNT), etc.). This also links into not having the appropriate documents in place in case something unexpected happens - like a Power of Attorney naming someone you love to make health care and financial decisions if you are no longer able.

For example, remember the Terri Schiavo case? Schiavo suffered a cardiac arrest in her St. Petersburg, Florida, home on February 25, 1990. She was resuscitated, but suffered massive brain damage due to lack of oxygen to her brain and was left comatose. After two and a half months without improvement, her diagnosis was changed to that of a persistent vegetative state. For the next two years doctors attempted speech and physical therapy and other experimental therapy, hoping to return her to a state of awareness, without success.

In 1998 Schiavo's husband and legal guardian, Michael, petitioned the Sixth Circuit Court of Florida to remove her feeding tube pursuant to Florida law. He argued that Schiavo would not have wanted prolonged artificial life support without the prospect of recovery. He was opposed by Terri's parents who argued that she was conscious. The court determined that Schiavo would not have wished to continue life-prolonging measures, and in 2001, her feeding tube was removed for the first time, only to be reinserted several days later. In 2005, a Pinellas County judge again ordered the removal of Terri Schiavo's feeding tube. Several appeals and federal government intervention followed, which included U.S. President George W. Bush returning to Washington D.C. to sign legislation designed to keep her alive. After appeals through the federal court system upheld the original decision to remove the feeding tube, staff at the Pinellas Park hospice facility disconnected the feeding tube on March 18, 2005, and Schiavo died on March 31, 2005.

In all, the Schiavo case involved 14 appeals and numerous motions, petitions, and hearings in the Florida courts; five suits in federal district court; extensive political intervention at the levels of the Florida state legislature, then-governor Jeb Bush, the U.S. Congress, and President George W. Bush; and four denials of *certiorari* from the Supreme Court of the United States. This poor woman was in limbo for 15 years while her parents and husband fought over whether she should live or die.

Had she had proper documents in place naming a specific person to make these decisions, this could have cut down the time frame and monies spent substantially, not to mention her suffering.

4) Not doing enough "discovery" when making financial or legal recommendations

To make an educated, informed recommendation, advisors need to know everything about your financial standing – EVERYTHING! In other words, how can a financial advisor recommend you put your monies into various investments without knowing anything about your personal or estate taxes? Some advisors don't even ask for your tax information. Same for an attorney - do they collect income tax returns before recommending a living trust or will? Why not? How can they really make a definite recommendation regarding your legal needs without that?

Most advisors whether advising you financially or legally have one goal in mind - how much money are they going to make off of you? Not whether they are getting all of the details or what may be best for your specific situation. They cannot recommend what is best for you with merely a snapshot of your finances. Everybody is different and therefore, advisors and attorneys need to request ALL of your information! They are not doing their Due Diligence if they don't.

5) Naming the financial institution as the owner of the annuity instead of the annuitant

Upon the sale of an annuity, the financial advisor quite often will name the financial institution they work for as the owner of the annuity. For example, Morgan Stanley or Merrill Lynch (to name a couple) can own an IRA annuity while the client is the annuitant.

There is absolutely no benefit to the client in this situation, but a HUGE host of disadvantages. It is impossible for an annuitant to do any of the following when he/she is not the owner of the policy:

- Take a distribution of cash or an RMD (required by law)
- Change beneficiaries
- Reallocate monies to different investments available inside the annuity to provide a better return
- Reallocate monies outside the annuity, say, to a money market because you think the stock market might fall

The only thing one can do if they are not both annuitant and owner is to add money to the annuity. That's all!

So, why would an advisor name the institution as the owner? To maintain control. The client's hands are completely tied because they cannot decide to leave their current planner without changing the owner, which requires the financial institution and the advisor to approve such a change (much more paperwork and hoops to jump through for you).

This is so dangerous on so many levels. I could conduct an entire seminar on just these dangers. The most egregious being the advisor often names the owner (the financial institution) to be the beneficiary. If you are the annuitant and find this out, you cannot even change the beneficiary from the financial institution until you first have the current owner approve mounds of paperwork to name you as the owner. Not only is this an absolute nightmare, but it is illegal! Unfortunately, it happens every day.

It is important for you to be aware of these dangers, and to have an advisor or estate planner who knows how destructive some of these mistakes can be.

About the Author:

Jean Ann Dorrell began a career in the insurance and annuity industry in 1991. She has achieved numerous designations and awards. Since 2005, Jean has been awarded continuous membership to the Million Dollar Round Table elite group "Top of the Table." MDRT is an international, independent association for leading life insurance and financial services professionals.

Jean has achieved the prestigious Certified Estate Planner designation under the direction of the National Institute of Certified Estate Planners (NICEP). NICEP is nationally recognized by many of the industry's top Broker/Dealers, Insurance Companies, and numerous professional financial, legal, and tax service organizations that are involved in the area of estate planning. You can find Jean on NICEP's website at www.nicep.org.

Jean is also a published author of the book, "Don't Be A Victim! Protect Yourself!"

Jean is has been a regular Saturday morning guest on Fox 35's Good Day Orlando in The Money Watch Segment, where she contributed valuable information regarding your financial future. Visit www.TheSmartMoneyGal.com to watch previous news segments.

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