

Estate Planning Deficiencies Checklist

Major red flags in estate planning that warrant taking your estate plan to a licensed attorney in your estate.

General Deficiencies

- ☐ It's been 5+ years since the documents were signed or reviewed by an attorney.
- ☐ Several key decision-makers have predeceased, their legal names have changed, or your relationship with them has changed.
- ☐ Substantial increase or decrease in wealth since the plan was first drafted.
- ☐ Second marriage, or non-joint children.
- ☐ Unmarried long-term partner.
- ☐ You own property in multiple states and haven't consulted an attorney in each state. (For example, if you own property in Oregon but live in California, you should talk to both an Oregon attorney *and* a California attorney. There are planning opportunities that the opposites don't know).

Trust-based Deficiencies

- ☐ Unclear definition of incapacity or relies on court/physician determination of capacity.
- ☐ Names no Trust Protector, Trust Advisor, or similar role intended to keep the trust out of court.
- ☐ No Credit Shelter Planning ([Taxable states](#) or ~\$14m Federally)
- ☐ Lacks needs-based benefits or incapacity toggle to allow a beneficiary to inherit in an ongoing trust to preserve benefits even after inheritance.
- ☐ Trust has a clear statement of intent providing guidance and reducing conflict.

Will-based Deficiencies

- ☐ It is a joint will with a spouse.
- ☐ No associated Durable Power of Attorney or similar tool for incapacity planning.

Special Considerations for Minors, Adults on Needs-Based Benefits, or Incapacitated Individuals

- ☐ Names the minor or adult on state benefits directly as a beneficiary instead of through a needs-based trust or general trust. (Requiring a court proceeding).
- ☐ No Guardians for the minors are named in the will or power of attorney.

The checklist is provided by Kaitlyn A. Metscher, JD MBA free of charge. It is not intended as legal advice and should not be construed as such. As always, seek your own independent legal advice.

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