MVMA Lunch and Learn Seminar
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“Dirty Dozen” Estate Planning Mistakes

… and how to
detect & avoid them

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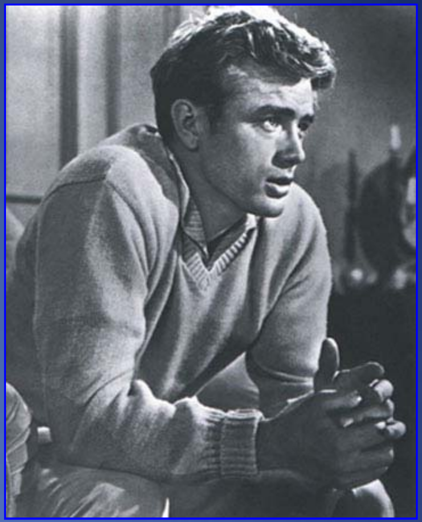
Estate Planning Goals:
Peace Of Mind, Family Harmony

Three Keys

1. Maintaining control during incapacity
2. Quick & cheap wealth transfer at death
3. Protecting beneficiaries from others & themselves

Intestacy



- James Dean ("Rebel without a Will"):
  - – Died at age 24 without a will (intestate)
  - – Entire estate, including licensing fees, passed to his father, who had abandoned him as a child.
  - – Licensing fees generate $1 - $3M annually.

Unintended Heirs

- Marilyn Monroe:
  - Died at age 36
  - Will left all personal effects to Marilyn’s acting coach, Lee Strasberg, with “wishes” to distribute items to friends and colleagues.
  - Strasberg later remarried, and at his death, his estate plus all Monroe’s property went to his widow – a complete stranger to Marilyn – and not to Marilyn's friends or colleagues!
  - Marilyn's personal effects have been auctioned off for millions of dollars.

Predators, Spend-thrifting

- The Woolworth *Mis*fortune: Barbara Hutton & F.W. Woolworth
  - Granddaughter of Woolworth's founder
  - At age 10, inherited $25M in trust.
  - Trust (now worth $50M) ended when Barbara turned 21, in 1933.
  - 46 Years and 7 husbands later, dies at age 66 with mere $3,000.
  - Years of relentless exploitation, spousal abuse, drug addiction and outrageous, uncontrolled spending.

Pension Fiasco

- John Denver
  - Died in a plane crash in 1997 with no estate plan.
  - $19M Estate probate and IRS disputes took over 6 years.
  - Failed to name pension beneficiary! Result? Loss of *tens of millions* in taxes and tax-free compounding over the life of his children.

#1 Mistake
Failing to Address Health Care Decisions

Modern Medicine

- 85% of deaths occur in hospitals and nursing homes (i.e., long term care)

Result:

Longer periods where patient lacks decision making capacity

Health Care Decisions

Problems Created:

- Conflict – Terri Shiavo
- Guilt
- No Directions
- No “Decision-maker”
- Delays
- Costs

Solution: Health Care Directive

- Identify Decision-Makers
- Clear statements of intent to loved ones
- Remains, funeral services, organ donation

#2 Mistake
Access to Medical Records – Failing to Plan for HIPAA

HIPAA – Lock's Down Private Health Care Information

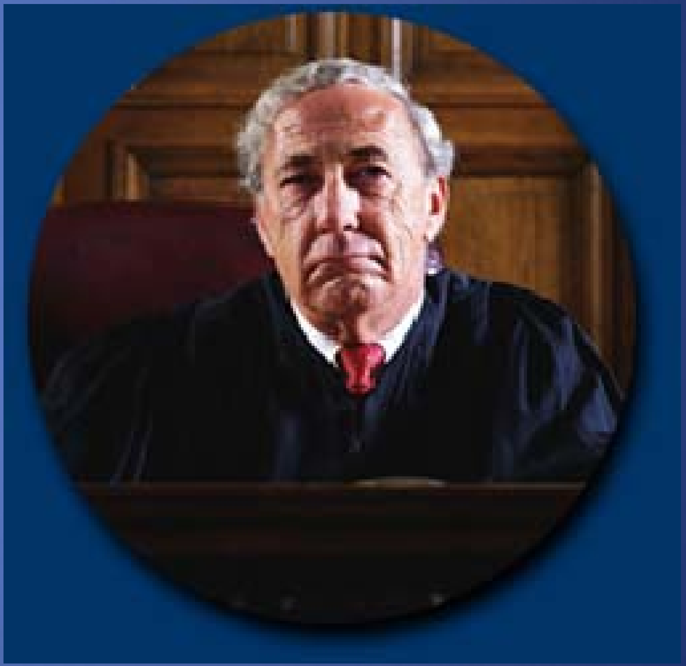
- Medical personnel face stiff penalties
- Reluctant to permit family members access
- Special HIPAA Authorization ensures access to medical information

#3 Mistake

No plan to control financial & property matters during incapacity

Stuck in Conservatorship During Lifetime

Without appropriate legal documents to manage your assets during incapacity, a court supervised "<u>conservatorship</u> is probably inescapable"



Conservatorships = Problems

- Time-Consuming
- Expensive
- Cumbersome
- Creates Delays
- Emotionally Trying
- Public Record

Avoid Conservatorships with Durable Powers of Attorney

Durable power of attorney An "individual can delegate to an agent the power to make financial transactions on his behalf if he is unable to do so himself."

*Note to small business owners – Minnesota's statutory power of attorney provides the agent with authority over business operating transactions (e.g. continue/modify contractual arrangements, demand/receive all money due to the owner, etc.)

*Also, consider utilizing a corporate resolution naming a successor (e.g. Vice President).

Avoid Conservatorships with Trusts

<u>Establishing a Trust</u> "An individual can appoint a trustee to manage his or her financial affairs and thus can avoid the need for an appointment of a conservator"

*Note to Veterinarians – under Minnesota law, a trust cannot own an interest in a professional firm (e.g. a veterinary practice); so the power of attorney is particularly important for incapacity planning.

#4 Mistake
Failure to Understand & Plan
For Estate Taxes

How Big Is Your Estate?
(You may be surprised!)

- Home
- Retirement Plans
- Life Insurance
- Real Estate
- Investment Accounts
- Autos, boats, RVs
- Furnishings, collections, personal effects

Federal Estate Tax
American Tax Payer Relief Act of 2012

- Unified Estate and Gift Tax Exemptions: $5,000,000 per person (indexed for inflation)
- Top Tax Rate: Increased from 35% to <u>40%</u>
- No Sunset, at least not under the Act
- Portability

What is Portability?

Explanation of “Portability” Feature

1. Assume H owns $7M in assets and W owns $3M. W dies first.
2. W’s estate $3M passes to H.
3. H now owns $10M of assets. H can utilize the portable unused $5M from W and use his own $5M exemption on top.
4. Result: No federal estate tax on $10M.

NOTE: Minnesota estate tax is still applicable.

Minnesota Estate Tax

A. Review of Minnesota Estate Tax

1. Estate Tax Exemption of $1M
2. Top Tax Rate of 16% (net assets greater than $10.1M)
3. Quirk - bubble tax on amounts just over $1M

Taxable Estate	MN Estate Tax	MN Effective Tax Rate
$1,020,000	$8,200	41%
$1,040,000	$16,400	41%
$1,060,000	$24,600	41%
$1,080,000	$32,800	41%

Minnesota Estate Tax

B. Reducing Estate Tax

1. Include tax provisions in your Will or Trust.

   a. Credit Shelter Trust (married couples)

   b. Charitable Devises (consider the **Minnesota Veterinary Medical Foundation** as your charity; check out www.mvmfcares.org for more info)

2. Lifetime Gifting: **BE AWARE** – Minnesota now has a Gift Tax with a 3 year look back!!! 10% tax on gifts exceeding $1M.

   a. Annual Exclusion

   b. Medical and Qualified Educational Expenses

   c. Charitable Gifts

3. Sophisticated Planning – ILITS, CRATS, etc.

Minnesota Estate Tax

C. Qualified small business property and qualified farm property exemptions

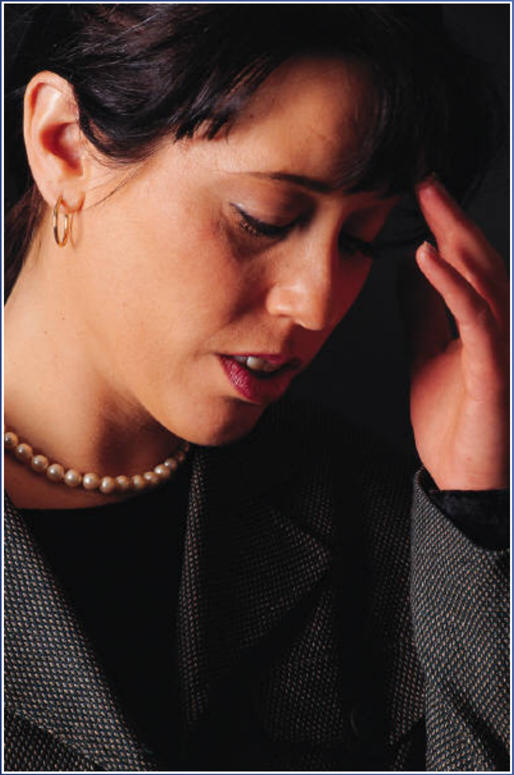
1. Allows ***farmers*** with a taxable estate for MN estate tax purposes to exclude up to $4M of the value of ***qualified farm property***.

2. Allows ***small business owners*** with a taxable estate for MN estate tax purposes to exclude up to $4M of the value of ***qualified small business property.***

3. For both types of qualified property the following must be true:
   (i) decedent owned ***qualified property*** for at least 3 years before death; (ii) a family member must use the property for the trade or business for 3 years after death; (iii)the family member who will use the property must agree to pay recapture tax of 16% of amount of exclusion if agreement to use property for 3 year period is not kept

#5 Mistake:
Thinking Children – Minor And Adult – Don’t Need Inheritance Protection

What if your child …



- Becomes instantly “rich” at 18
- Suffers a divorce
- Experiences creditor problems
- Gets sued

Keep it in the Family!

Lifetime Children's Trust

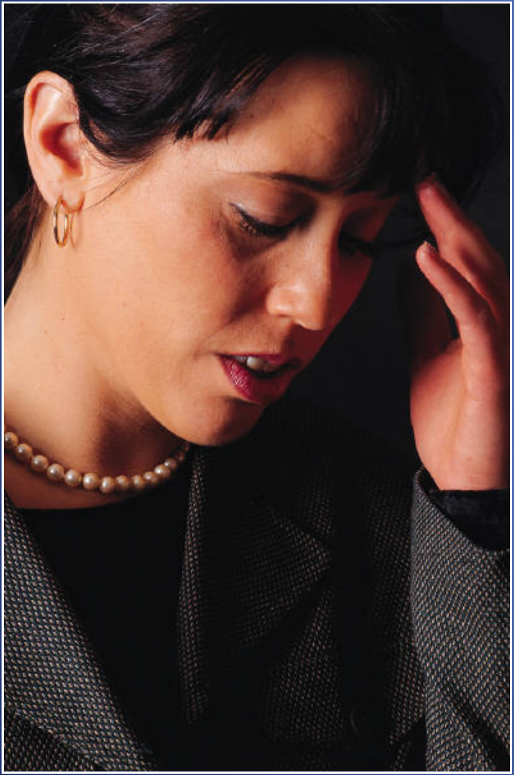
Income

Principal

Children’s Trust - Benefits

- Protects inheritance from children’s divorces
- Protects inheritance from lawsuits, bankruptcy, personal injury claims, IRS, etc.
- Protects child against spend-thrifting

Children’s Trust – Inheritance Protection



- Adult child becomes co-trustee or eventually trustee of his trust
- Has significant access to income and principal
    - Health, Education, Maintenance, Support
- Can ultimately consume it all – few strings attached

#6 Mistake
Failing to Transfer “Values”

Traditional Estate Plans Focus Almost Exclusively On:

Transferring Assets

Reducing Taxes

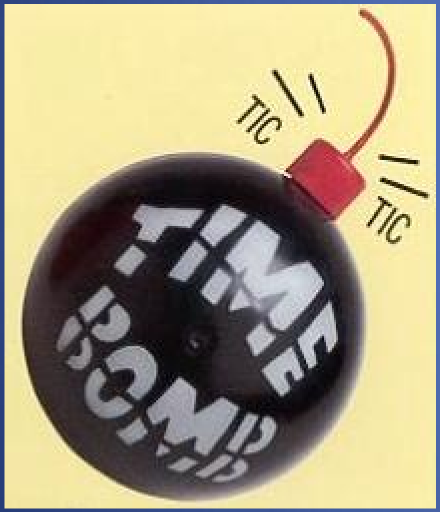
Administration Costs

Comprehensive Estate Plans Add

- Ethical Wills (letter to family describing values and beliefs, life lessons, forgiving others)
- Incentive Trusts (education, substance abuse)
- Involving children in the process (e.g. the Cabin Trust)

#7 Mistake:
Not Preserving Tax Deferral Benefits of Retirement Plans

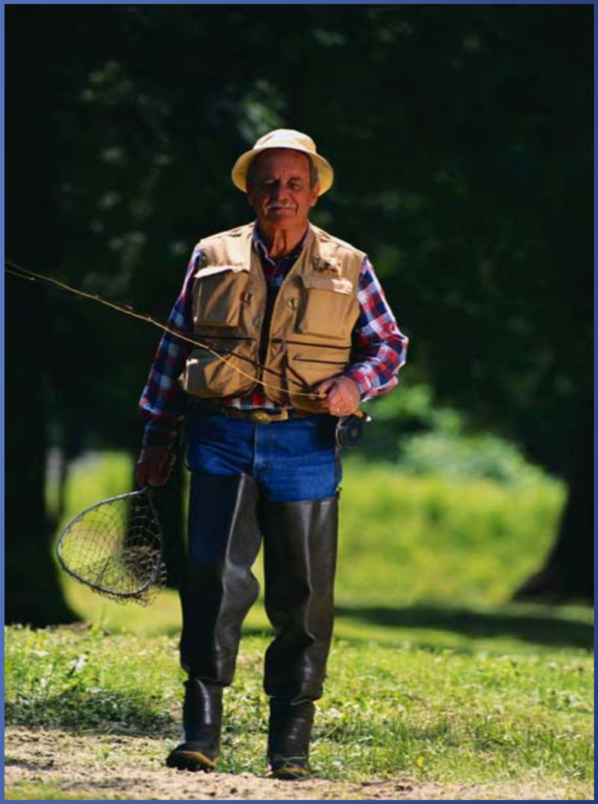
Be warned, be *very* warned!



Without proper planning. <u>most</u> of your retirement account could be subject to immediate taxation on death

Prolong IRA Ownership!

The longer your beneficiaries can keep funds in an IRA after death, the more wealth they can create!



Prolong IRA Ownership!

- Can my IRA be Stretched?
  - Name a beneficiary now – primary & contingent
  - Make sure IRA custodian allows the stretch. Some bank and other financial institutions are ignorant of the stretch IRA
  - Roll your company plan (401K, 403B or 457 plans) to an IRA to ensure the ability to stretch (disclaimer – consider creditor protection of IRA vs. ERISA qualified plan).

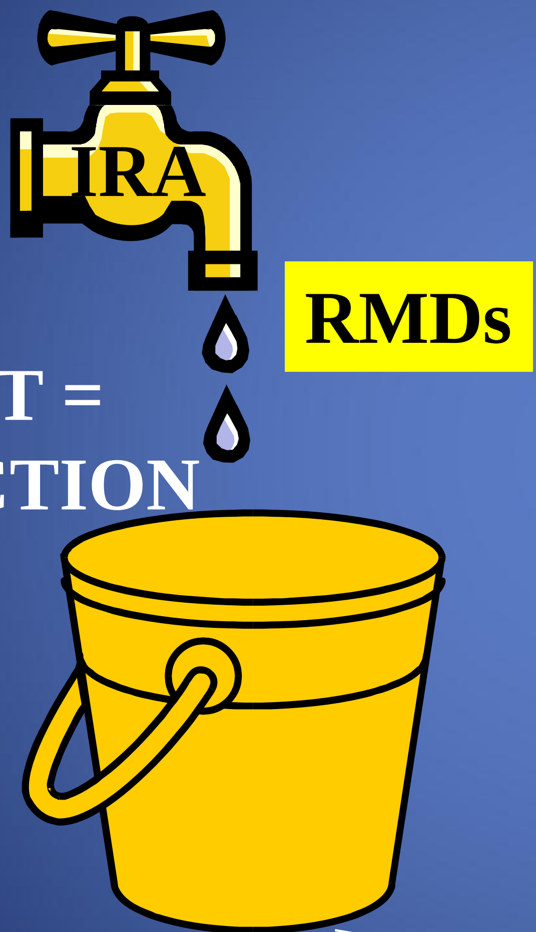
IRA Legacy Trust

To protect and increase wealth by keeping funds in a tax-protected IRA as long as possible

The IRA Trust

- Revocable Trust
- Established now by IRA Owner
- Beneficiary of IRA at Owner’s Death
- Separate from your Living Trust

How Does It Work?



- IRA pours into the Trust at Death
- RMD "withdrawn" from IRA each year
- Trust Principal is Asset Protected!

Mistake #8
Failing to Organize and Consolidate

Biggest factors causing estate administration delays & increased costs

- Lack of communication
- Inability to locate assets
- Redundant accounts
- No central repository

Key: Create a COMPREHENSIVE estate plan!

Organizational Solutions

- Estate Planning Portfolio Repository
- Consolidate Accounts
- Stocks in “Book Entry”
- Emergency document access (consider your digital assets).

#9 Mistake
In second marriages, failing to protect your spouse, and your kids

Typical Problems

1. Surviving spouse leaves your money to her/his children
2. Surviving spouse is spendthrift, effectively disinheriting your children
3. Surviving spouse is victimized by “gold digger”, decimating your estate

SOLUTION:
QTIP “TRUST” YOUR SPOUSE!

– Passes inheritance to your spouse (and your children) instead of your spouse’s new spouse or your son-in-law or daughter-in-law

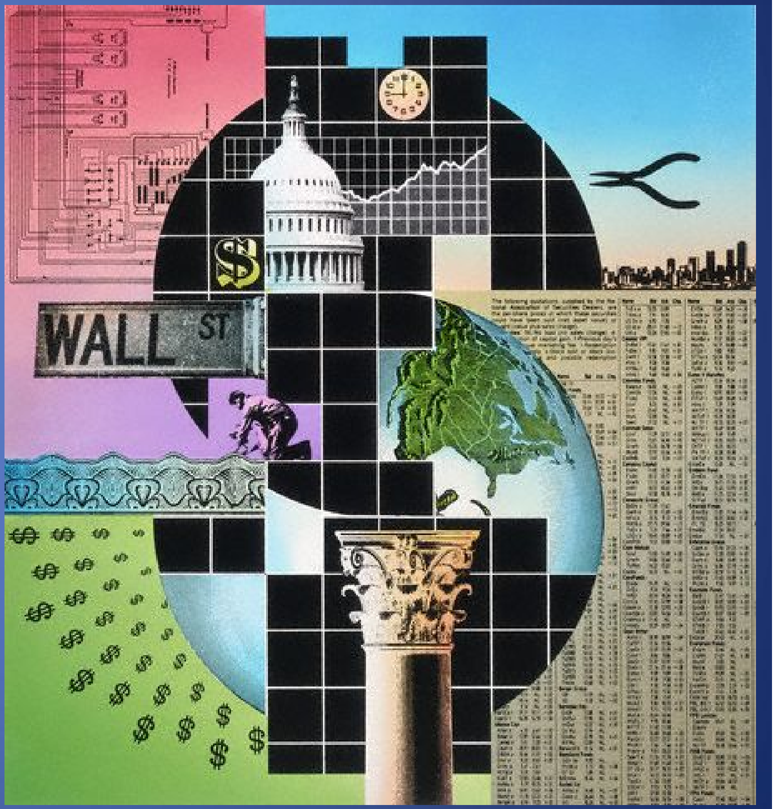
– Provides income and principal to <u>your spouse</u> for life in accordance with his/her needs

– Then income and/or principal goes to <u>your children</u> per your and/or your spouse’s choice

#10 Mistake
Failing to Update Your Beneficiary Designation and/or Properly Fund Your Trust

Beneficiary Designation

- Tailored to and coordinated with your estate plan
- Life Insurance, Qualified Plans, IRAs, etc.
- Naming Individual, Charity, Trust, Contingent Trust
- Review and/or update regularly



Revocable Trust Funding

- Real Estate
- Bank Accounts and CDs
- Stocks/Bonds
- Vehicles
- Personal Property
- Set goals, use checklists
- Ongoing responsibility

#11 Mistake
Failing to Plan for Tangible Personal Property

Common “fights” after death involve Tangible Personal Property

- Sentimental items
- “Reminders”
- Photos
- Jewelry
- Artwork
- Collectibles

Tangible Personal Property -- Solutions

- Personal Property Memorandum
- Communication
- Clearly articulated process

#12 Mistake
Believing Estate Planning is a “One-Time Event”

Mistake #12 – Believing Estate Planning is a “one time” event

- Estate planning is a lifetime process
- Personal and legal changes occur
- Lasting relationships are key
- Update, update, update!

“Dirty Dozen” Scorecard – Are You Prepared?

1. Terri Shiavo Problems
2. HIPAA Privacy Lock-out
3. Incapacity Vacuum
4. Death Taxes
5. Children’s Divorce, Creditors & Predators
6. Family Values Lost
7. IRA Funds Wasted
8. Chaotic Records
9. Surviving Spouse’s Creditors & Predators
10. Family Feud Over Sentimental Items
11. Failure to Fund
12. Estate Plan Grows Stale