

TOP FIVE REASONS WHY YOUR FAMILY WILL HAVE TO HIRE AN ATTORNEY FOR YOUR ESTATE:

1. No documents were created

When there are no documents (Wills, Trust, Powers of Attorney), the estate cannot be managed either during life or at death without the assistance of the court system. The court process is time consuming and expensive. Even when a couple is married, the spouse cannot act on behalf of the other spouse if there are no documents, unless the spouse's name is on the bank account. The estate will pass to the surviving children, but only through the probate process, which will take a minimum of 6 months. If one of the parents becomes incapacitated, the children cannot pay the bills, or make health care decisions in the absence of documents which authorize that person to act.

2. The assets were never transferred to the trust

When a living trust is created, the person's assets should be retitled into the name of the trust. However, during the course of a person's life, they generally change their assets. If the house is taken out of the trust to be refinanced, or if a new property is acquired, the assets must be put into the name of the trust. The trust, and the assets, should be reviewed on a periodic basis to make sure that the trust has been properly funded.

3. A gift has been made to a child who is disabled, and on government benefits

A child on benefits who receives an inheritance from a Will, Trust, or an IRA, will lose their benefits. With proper planning, a special needs trust can be created by the parents, and the child will have the benefit of the gift, and will not lose their benefits.

4. A person has been named to be the Trustee/Executor who is not available, or cannot qualify

The documents should be reviewed to ensure that the person(s) who have been designated as the Trustee/Executor are still available to act in that capacity. Some documents have been created listing banks that no longer exist. Some documents require bonding of the Executor, and if the person named to be executor has filed bankruptcy, they will not qualify for a bond.

5. The document was written with specific instructions that cannot be carried out by the Executor

When a document is created to leave a specific asset, or a specific dollar amount, to a beneficiary, the Trustee/Executor may not be able to follow the instructions of the decedent if the assets have been sold, or decreased in value. Periodic review of the documents provide the opportunity to revisit the distribution of the estate, and update the documents with current information. Banks are no longer willing to set up accounts with “two signatures required”, so if the document names co-Executors or co-Trustees, they may have a problem acting on behalf of the estate.

As an estate planning attorney, I go to court every week to solve these types of problems. With proper planning, and periodic review, your family can save a considerable amount of money.