

# Common Mistakes in Estate Planning

by Attorney Michael Hooker

Here are a few examples of problems created by people who didn't hire a professional or hired one that really didn't know elder law.

An elder transferred her house to her son. The son didn't have estate planning documents of his own and unexpectedly predeceased his mother. At the time, she was in a nursing home. Since he died without a Will the asset was inherited by the elder. She was knocked off Medicaid and had to pay privately. What should have happened at the outset was for the son to sign a Will giving his estate to someone other than his mother. For example, his brother.

An elder names her brother as her Power of Attorney. She fails to name an alternate. Her brother predeceases her. At his death, the elder lacks the cognitive ability to sign a new Power of Attorney. The family is forced to obtain a Conservatorship in Probate Court in order to deal with the elder's finances.

A daughter agreed to have her ailing father move in with her. He began to have serious psychiatric issues. Her attorney sought to have her appointed as her father's guardian and place him in a nursing home. The case languished in court for months because the attorney didn't know how to interface with the geriatric clinicians. The attorney didn't have the wisdom to have the daughter privately pay for a psychiatrist to have the father admitted to a skilled nursing facility directly, without Probate Court.

An attorney had an elder deed her house to a Revocable Trust in order to avoid probate upon her death. Years later, she was admitted to a nursing home. The Trust did not protect the asset. Medicaid told the elder to revoke the Trust and pay for her care with the house proceeds. An elder left a dollar to her estranged son under her Will and the rest to her daughter. The son was able to contest the Executor's accounting because he was a beneficiary of the estate. The elder should have simply excluded him from her Will rather than leave him a dollar.

An elder, with the advice of an attorney, transferred her house to six children. One predeceased her leaving a disabled child and the two became estranged. The elder was unable to tap the equity in her house to pay for care in the home because the children wouldn't cooperate. Do you think the attorney told the elder this might happen? Not likely.

Wife names her 6 year old granddaughter the beneficiary of \$200,000 in CDs without consulting an attorney. The elder dies and the 6 year old inherits the money. Because no Trust was established, the minor's parents must go to Probate court to obtain a conservatorship which requires they be bonded and file annual accountings until the child reaches 18.

Daughter/Power of attorney pays herself for caring for her mother but there is no formal Caregiver Agreement. Nursing home application for Medicaid denied. Medicaid viewed the payments as gifts and self-dealing