

Most estate plans don't work



Estate-Plan Edge
By CURT FERGUSON

Editor's note: This is part one of a three part series exploring the reasons why most estate plans don't work.

THE observation was once made that "most estate plans don't work." My initial reaction was surprise, then defensiveness. I was new at estate planning then, and thought surely this was an exaggeration.

Over the years that followed, as I helped families settle estates and as I created plans for others, I came to agree.

Let's define what we mean by "work." Bill and Mary, our typical farm couple, have certain objectives in mind, a mental picture of what they want to happen — their goals and objectives.

- ✓ They want to stay in control of their own affairs while alive and well.
- ✓ They want to provide for their own care in case of a disability.
- ✓ Then they want to give what they have to the people they choose, the way they want.
- ✓ They would like to transfer a legacy — their life wisdom — along with their material wealth.

Unless their estate plan accomplishes all of that, it will not work.

Burgers at the buffet

Imagine that your whole eating-out experience in life is hamburgers and fries. Then one day you stop in for lunch at a nice buffet.

You ask a waitress to bring you a hamburger and fries. She asks, "Is that all you want?" and, not realizing that there are 200-plus items available on the buffet, you reply, "Yes, thank you!" and pay the buffet price.

You are satisfied because you didn't know what was available.

The first point of failure in estate planning is a lack of counsel and education as you are developing your estate plan. Most people never learn what is available. You don't have the opportunity to do what you really want unless you know what you can do. You end up choosing your outcomes from a very short menu.

The "hamburger and fries" of estate planning includes a standard will, living trust, power of attorney and living will documents — one-size-fits-all forms, you might say, focused on probate and estate taxes. There is so much more that you can do to make a meaningful difference in your own life and the lives of your heirs. Consider some examples.

Protection for you. You probably have very distinct opinions about how you would want to be taken care of if you become disabled. Your mental picture may include a nursing home, or maybe not. It might include around-the-clock care in your own home, no matter what the cost. It might mean living with your children; or that might be quite against your wishes!

If these issues are not discussed with your attorney and in some detail, then your plan will not include your wishes. Your children will have to guess what sort of care you want.

If you are married and consider how you might transfer your estate at death, you might like to provide protection for each other.

Did you know you can plan so that whenever one of you dies, your farm would be fully protected from subsequent disasters like lawsuits, remarriage or nursing home costs during the survivor's lifetime? Would that provide you added peace of mind?

Protection for your heirs. You might feel that your family wealth — especially the farm — should stay in the family. If you leave property to a son, for example, did you know you could assure that it could never be taken away by the daughter-in-law in the event of a divorce? How about

Like to comment?

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protecting the property from a disaster like an unfortunate traffic accident from which your son ends up being sued? You can provide that protection if you know it's available.

You may want to assure that not only are estate taxes avoided at your death, but that the farm will remain free from estate tax as it passes through future generations forever. These are all protections that can be built into your estate plan.

And yet these protections are only a small sampling from the buffet.

So why the failure?

Many attorneys say they "do estate planning." After only an hour or so with the client (explaining basics like probate and taxes) they prepare standard-form legal documents to accomplish only "hamburger and fries" goals.

Your plan won't work because it won't do what you would like it to do. You didn't know what else to ask for, and the counsel and education were not provided so you could make informed decisions.

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