

# 9 Estate Planning Pitfalls to Avoid



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BRASELTON, Ga. -- Changes in both demographics and tax laws require a massive rethinking of estate planning strategies, planners were told Tuesday morning at one of the first sessions at FPA Retreat.

The goal was to pass as much wealth to the next generation as possible, and do it in as tax-free a manner as possible, said Atlanta estate planning attorney Jeff Scroggin. But with the high estate tax exemption, he said, the estate-planning focus should now be to protect and preserve the family.

"The focus shifts to legacy," he said.

He suggested a variety of tactics that families might want to use -- including education funding and charitable family endowments but also ideas like family safety-net trusts and family investment banks where descendants could get funded.

Over the course of a rapid-fire hour-plus presentation, Scroggin laid down a series of warnings to planners about what he labeled "traps for the unwary" and other estate planning misfires. Here are several of the trouble spots he identified.

**1. No contingency planning for retirement assets.** Get new clients to confirm both primary and contingent beneficiaries, he cautioned. And make sure they have a plan for what would happen if a beneficiary predeceases them. If you leave assets to a child and that child has passed away, many states would redistribute that money among other siblings rather than to that child's own heirs, he warned.

**2. Failing to account for unique personal property.** Scroggin highlighted several assets that he said could prove particularly troublesome in a bequest. A firearm could create liability troubles if the weapon is prohibited or if the heir turns out to have a felony offense, he said. Some airlines -- Delta, for instance -- restrict an individual's ability to bequeath frequent flier miles or perks. Stored reproductive assets can also create a minefield for planners, he warned, calling out one potential issue: What would be a child's rights if he or she were born using frozen sperm after a parent's death? For some celebrity clients, Scroggin noted, a key issue might be the valuation of the "right of publicity."

**3. Not planning for Dad's new romance.** Scroggin cited a statistic that 61% of widowers are in a new romantic relationship within 25 months of a wife's death, compared with 19% of widows. These

new relationships "create heartburn for a lot of kids," Scroggin said. One area of trouble can be spousal sharing rules and homestead rights, which in some states can trump wills.

**4. Cutting corners in the estate plan.** The audit rate for estates with more than \$10 million is 116%, he noted. "The more disclosure, the better," he said, because once auditors find one problem, they tend to keep digging. "You'd better be squeaky clean."

**5. Coming up short on incapacity planning.** Because of increasing client longevity and mobility, your clients need medical directives and durable powers of attorney enforceable in any state, he cautioned.

**6. Failing to plan for aging parents.** Don't let your baby boomer clients rely on an expected inheritance as a retirement plan, he warned: As their parents' generation lives longer and lives lavishly, that inheritance may be minimal -- if there's any money left at all. In fact, some clients may actually have to support parents who are living longer than expected, he noted. Moreover, he added, 24 states have enacted filial support statutes that might allow creditors to go after children for the cost of a parent's care, with possible criminal penalties for noncompliance.

**7. Not getting appraisals of assets that are not readily marketable assets.** This is true even for nontaxable estates, Scroggins said, because clients' heirs will need to know that basis later. "Tell the clients they're being stupid" if they balk, he said.

**8. Failing to ask clients: Who do you trust?** Clients need to make decisions for several separate documents, Scroggins noted, and the answers might vary. Try to avoid putting the assets in the hands of the brother who filed for bankruptcy, for instance, or placing responsibility for medical decisions in the hands of a young-adult child. And make sure clients spell out -- in a separate document -- who should (and should not) have custody of any children. "Many clients are shocked to find out that you can't will your kids," he said.

**9. Not considering income tax consequences of trusts.** "Planning for death has become about basis and income tax planning," Scroggins said. Gifting assets is one income strategy for terminally ill clients, he said: Use RMDs to fund charitable bequests in advance, but make sure to get a waiver from beneficiaries so the charities recognize that they're getting advances. Ultimately, he said, "every financial planner needs a working knowledge of unique income tax rules of estates and trusts."