Rule Number One

Beware the “Short Form Estate Plan” – If anyone ever suggests adding their names to your accounts as a joint tenant, designating them as your beneficiary, or transferring your assets to them … relying on them to take care of you in the event of incapacity and carry out your wishes after you die … run. They are trying to take advantage of you.

The only appropriate case for Joint Tenancy or P.O.D. (payable on death) provisions is for married couples who express their mutual desire to leave everything to the survivor of them.
Jointly owned property is subject to judgments rendered against either of the joint tenants on accounts, real property, etc. You could lose everything you own by adding someone as a joint tenant.

Jointly owned property other than between husband and wife is deemed by the IRS to be owned by the first-to-die for tax purposes. It is the burden of the survivor to prove that the joint tenancy was a matter of convenience only and that the property actually belonged to the survivor.

Jointly owned property often results in bypassing the disposition of your estate stipulated in your Last Will and Testament. You might very well end up disinheriting your family.

Beneficiary designations bypass the disposition terms of your Last Will and Testament and/or Revocable Living Trust likewise often resulting in unintentionally disinheriting the descendants of named beneficiaries who predecease.

If you need to add a very trusted family member or friend to your personal checking account as a matter of convenience to pay your bills in the event of a short term illness, incapacity, or travel – do so using your Bank’s Power of Attorney form. They will then be acting as your “agent” rather than as a “co-owner”. Most banks will not accept a “lawyer-drafted” power of attorney that they do not have on file. There is too great a risk of fraud.

It is also advisable to never establish joint ownership of stocks, bonds, brokerage accounts, or real property outside of marriage.

**Rule Number Two**

**Always use appropriate professionals.** Do not rely on computer software for drafting wills, trusts, powers of attorney, healthcare powers of attorney, or living wills. Retain a Wills and Probate Attorney that specializes in estate planning to do so.

Stick to your own profession … Engineers who draw Wills and Trusts are like lawyers, accountants, doctors, financial advisors, and other professionals who build bridges … they are bound to fail. Remember: laws vary substantially in different states.

Most post incapacity and post mortem conflict is generated because of poorly drafted documents and improperly titled property than any other reasons.

**Rule Number Three**
Always name a Bank Trust Department or Trust Company to serve as a Co-executor and Co-Trustee with the “family member of choice” in your Will and Trust documents. Banks and Trust Companies are the only professional, bonded, and government-supervised fiduciaries.

Using the Co-Trustee approach provides a balance between the professional services that only a Bank Trust Department or Trust Company can give with the oversight and guidance of a trusted designated family member or very close friend.

If your trust is a testamentary trust for your minor children, you should consider having all of the assets remain in one trust until your youngest surviving child reaches the age of having had the same educational opportunities as your oldest child. Once your youngest child becomes 21 – 25 years of age, you should consider having the trust divide into equal shares – one for each child – and have each child become a co-trustee with the bank trust department or trust company for a period of years to gain experience for handling substantial sums of money and investments.

If your trust is a testamentary trust for your spouse, you should consider establishing two separate trusts for tax reasons – a qualified marital deduction trust and a family unified credit trust. It is usually best to have your spouse serve as a co-trustee of these trusts with your bank trust department or trust company, if your spouse is a trust beneficiary.

If you are establishing a Revocable Living Trust solely for yourself – it is important that you title your assets in the name of the Trust and have your Bank or Trust Company serve as custodian of the assets while you remain the Trustee. Then when you are unable to administer your own affairs, the transition will be a simple one and the Successor Trustees can act immediately.

It is also wise to have the “family member successor trustee” have a “springing power of attorney” that enables them to transfer any assets into the Trust that you may have failed to properly title.

Attorneys, accountants, and financial-investment advisors should never be named as a substitute for a Bank Trust Department or Trust Company as an Executor or Trustee, and family members and friends should never be named to serve alone for multiple reasons.

Always give the family member Co-Trustee the authority to arbitrarily change Banks or Trust Companies if the corporate fiduciary’s fees are changed or if the individual trustee changes county or state of residence.
Planning for Life Documents

Planning for life documents should be prepared to address the multiple contingencies of protecting you and your assets against the prospect of your becoming mentally or physically incapacitated.

These documents include:

- Healthcare Powers of Attorney that designate the representative of your choice to carry out your wishes if you are unable to do so. This minimizes the prospect of family conflict.

- Living Wills act as a firm directive to physicians, hospitals, family, and judges in the event of dispute over your wishes to not be placed on or removed from life support under specifically designated circumstances.

- General Powers of Attorney designated a very trusted family member or friend to be able to make decisions about your financial affairs, sign tax returns, and represent you legally.

  It is usually best to use a “springing” power of attorney that becomes active only in conjunction with letters from two physicians that you are unable to manage your own affairs, and

  it is usually best to only allow the named family member to transfer your assets to a Revocable Living Trust whenever you have one.

- Revocable Living Trusts create the most effective Financial Management and Protection technique for your assets. In states where probate cost is a problem in estate settlements, these trusts are often used to minimize those costs by bypassing a Last Will & Testament.

Planning for Death Documents and Considerations

The primary planning tools for planning for death are Wills and Trusts. These documents are drafted to most cost and tax-effectively distribute your estate.
Because state law governs and frequently differs – it is vital that you seek the advice of a Wills & Probate attorney practicing in your state to draft all documents.

Begin your Estate Planning process focusing on family circumstances and needs rather than on the Federal Estate Tax consequences.

**Gift & Estate Taxes**

Many people become overly and frequently unnecessarily concerned with the fear of having a substantial portion of their estates go to the IRS in the form of Estate Taxes.

It is important to understand the current Estate Tax thresholds and simple rules to avoid them.

- Your Estate for Federal Estate Tax purposes includes everything you own and over which you have the right to direct the disposition of upon your death. This includes all of your assets, jointly owned property, retirement benefits, life insurance, and trusts over which you have a power of appointment.

- The Federal Estate Tax threshold for 2008 is $2,000,000 that you can leave to your descendants Federal Estate Tax Free.

- The Federal Estate Tax threshold for 2009 is $3,500,000 that you can leave to your descendants Federal Estate Tax Free.

- The Federal Estate Tax threshold for 2010 is Unlimited that you can leave to your descendants Federal Estate Tax Free.

- If there are no changes in the Federal Estate Tax Law – the threshold reverts in 2011 to $1,000,000 that you can leave to your descendants Federal Estate Tax Free.

Note that there has been a substantial lobbying effort on behalf of numerous organizations to eliminate the Federal Estate Tax. Although this is not likely to occur – it is reasonable to expect Congress to change the law before 2011 with a substantially higher threshold than is in place now.

- Life insurance death benefits are always income tax free but are normally included in one’s Estate for Federal Estate Tax purposes. Life insurance if transferred to or purchased by an independent entity, however, such as an Irrevocable Trust or Business not owned by the insured may be able to keep the death proceeds from being included in the estate of the insured for tax purposes.
• Estates in excess of the threshold amount can also circumvent estate taxes upon the death of the first spouse through the use of the unlimited marital deduction.

• Estates in excess of the threshold amount can utilize Testamentary Trusts to utilize the Exemption Equivalent amount for the benefit of a surviving spouse and still keep it outside of the Taxable Estate of the spouse upon the death of the surviving spouse. In other words – a couple can actually leave up to $4,000,000 in 2008 to or for the benefit of each other and pass it on to their descendants completely Federal Estate Tax Free.

• Business Owners with very large estates can often utilize Irrevocable “Storm Shelter” Trusts while they are living to Shift Assets, Protect the Assets from Legal Judgments, Freeze Appreciation on the Assets, and Fund Life Insurance on a tax advantageous basis.

• Annual Gifts or Deathbed Gifts of $11,000 per donee can be made and excluded from inclusion in one’s estate for Estate Tax purposes.

### Beginning the Process

There are two sources for obtaining professional advice for which you should not expect to be charged a fee: Financial Advisors in the life insurance industry and Representatives of your Trust Department or Trust Company.

I recommend you first meet with your Financial Advisor to organize and evaluate your estate planning needs for life, health, disability, critical illness, and long term care insurance. Then contact your bank and other trust companies in your area to find out which of them offer personal trust services. Obtain copies of their published fee schedules and then meet with representatives of those you consider to be candidates to help you and your family.

Because trust officers specialize in “picking up the pieces” when it is too late to make changes and work with many attorneys in your area – ask them for recommendations of attorneys you may want to consider. Then ask your financial advisor to comment on the attorney lists provided by the trust officers. If your Bank or Trust Company offers counseling services – often at no charge - to assist you in thinking through the many issues that need to be addressed, I encourage you to take advantage of this service; it will usually substantially reduce time required with your attorney, and therefore the cost of your estate plan.
Next – interview attorneys you are considering retaining. Describe the type estate plan you are asking the attorney to prepare based on your discussions with your financial advisor and trust officer – ask for an estimate of preparation costs. Once you have selected and retained your attorney-of-choice, you are on the way.

The Simple Will

Often people in a good, stable marriage express their goal to simply leave everything to the surviving spouse with an outright and equal distribution at the death of the survivor to their adult children and they determine that their personal estate – excluding life insurance – is less than $2,000,000, the estate tax threshold for 2008.

The Simple Will estate plan is appropriate for these situations and the most cost effective way to coordinate the Wills and Assets is to simply have all assets titled as Joint Tenants with Rights of Survivorship or Payable on Death.

Note the caution about joint tenant accounts being subject to judgments of either joint tenant above, and if some of the family assets were either brought in to the marriage from being earned or inherited prior to the marriage and/or if there is property inherited after the marriage – a couple may choose to keep those assets separately titled but with a P.O.D. (payable on death) provision to assure the easy transfer to the surviving spouse upon the demise of the first.

Revocable Living Trusts

Revocable Living Trusts are used for multiple reasons. In many states the cost of probate is based on the assets passing through one’s will and attorneys advise clients to title their assets in the name of a Trust for themselves that will bypass probate.

In other cases you may determine that because of your age, health, size of your estate, concern with family members contesting your wishes after your death, being in a marriage with children from prior marriages, being a surviving spouse alone, etc. that you need to utilize a Revocable Living Trust Estate Plan.

A Revocable Living Trust estate plan requires coordinating your Last Will and Testament that controls assets not titled in your Revocable Trust with the Trust itself. Your Will would nominate Executors, Custodians under the Uniform Transfer to Minors Act, and Guardians to be responsible for rearing your minor or handicapped children.
Your Revocable Living Trust would assure that your assets are properly supervised by your Trustees (recommended: Bank and Family Co-Trustees) for your benefit so long as you live with instructions on settling your financial and legal affairs after you die, followed by whatever ultimate distribution you may wish to make.

**The High Cost of Failure to Act**

Although laws vary from state to state – you may find that failure to address the Planning for Life and Death issues result in a Court Appointed Guardianship or Estate Administrator, and the person appointed may not be the one you want handling your financial affairs or making decisions about your personal welfare.

You will likely find that the charges allowed by State Law for guardianship and estate settlement administrators exceed the published fee schedule charges of professional fiduciaries (Banks and Trust Companies).

Also – the actions of professional fiduciaries are supervised with many checks and balances whereas that is not true of anyone else performing fiduciary duties.

**Coordinating Your Business, Benefits, and Estate Plans**

The quickest way to defeat your written estate plan is to fail to coordinate your business succession-continuation plan, business funded benefits, life insurance, designated beneficiaries, and title to your assets with plan documents.

**Conclusion**

There are multiple planning concepts to be considered and many tax-traps to avoid. It is simply important to always remember that “No shoe ever fit all feet”. Each case, each client’s goals, and all aspects of planning must be evaluated and coordinated from multiple perspectives in order to help clients best achieve the results they seek.

The client is like a village in the valley surrounded by mountains – with each professional advisor looking down from the mountain tops with different, unique perspectives. To achieve the best results – the client’s case should always be studied and considered from each perspective.