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### Top 10 Estate Planning Mistakes Families Make

If you type the search term “Top 10 Estate Planning Mistakes” into your computer’s search engine and tap the proper key, you will come up with a host of Articles from a host of sources. We have read many of them, and we’ve concluded that most if not all of these sources have their own axe to grind. But with over 100 years of combined estate planning legal experience<sup>1</sup>, we think our axe is as sharp as any tool in southeastern New England’s estate planning shed. We have drawn our list from all three of our estate planning attorneys as well as our Senior Paralegal<sup>2</sup>.

**Number 10: Not getting a clear understanding, before beginning the estate planning process, as to the attorney’s fee arrangements.** Does the attorney offer a free initial consultation? Once “engaged,” how do they charge for their services – flat fee, hourly fees? Will there be a written agreement as to fees upon engagement?

**Number 9: Not getting your beneficiaries’ input into the planning of your estate.** Let’s use the example of a client with grown children. Take the example of a widower client<sup>3</sup> whose daughter is a successful attorney and is married to a successful financial advisor. They and their three children

have a very good relationship with the client. Before deciding, for example, whether it makes sense to have the daughter’s share of the client’s estate held in a lifetime trust, why not bring the daughter and perhaps even her husband into the discussion? For creditor protection purposes and estate tax avoidance purposes, and perhaps even for family income tax minimization purposes and educational planning purposes, it makes at least theoretical sense to have the share held in a lifetime trust, of which the daughter and possibly even her husband could serve as trustees. They would then be in complete control of investments and distributions with less exposure to estate tax or creditors’ claims and with income tax planning and educational planning optimized.

**Number 8: Getting your beneficiaries’ input into the planning of your estate.** Have we contradicted ourselves? Not really. The same widower client happens to have two other children, one of whom has questionable financial judgment and the other of whom has health problems which qualify her for government assistance programs. Those are obvious examples of children whose input should almost certainly not be part of the planning process. But there are less obvious examples, and there are examples which are very tough judgment calls for both the clients and their advisors. What if the client is in business with one or more of his or her children? What if the children are the ones who are urging the clients to do their estate planning or to plan for the minimization of long-term care costs, processes which frankly benefit the children more than the clients? In the end, it has to be the clients’ call, subject also to the ethical strictures by which attorneys are bound.

<sup>1</sup>Steve O’Neill: 38 years. Mia Lahti: 25 years. Michael Lahti: 19 years. Senior Paralegal Laurie LaRoche: 30 years

<sup>2</sup>No attorneys or paralegals were harmed in the grinding of our axe, to the dismay of the general public.

<sup>3</sup>The client specifically permitted us to use this example. We could reveal his name, but then we’d have to ... you know the rest. Hint: it involves the use of a sharp tool from the estate planning shed.

**Number 7: Not getting your other trusted financial and tax advisors' input into the planning process.** A surprisingly high percentage of our prospective clients haven't often consulted with a financial or tax advisor. But if you have a long-time relationship with a trusted accountant, a trusted investment manager, a trusted personal or business attorney, or any other trusted financial or tax advisor, we encourage your getting them involved in the estate planning process, involving either attendance at the initial consultation -- although you'll want to clarify in advance if and how they'd charge -- or at least involving our "copying then them in" on our recommendations and any other important correspondence.

**Number 6: Not getting proper financial and tax advice.** Apropos of the preceding item, a surprisingly high percentage of our prospective clients seem to be doing their investing and/or financial planning on their own, or with several money managers or other financial advisors none of whom they would characterize as close advisors; and a surprisingly high percentage are getting inadequate tax-preparation advice (yes, we are tax advisors, but we do not prepare personal or fiduciary or business income tax returns). Just as those experts can recommend a good estate planning attorney, a good estate planning attorney can point you towards money managers or other financial advisors and tax preparers, not to mention attorneys specializing in areas other than estate planning, so that you'll have a more unified, "holistic" approach to your legal and financial needs. We consider this an integral part of proper estate planning.

**Number 5: Failure of the surviving or nondisabled beneficiaries or trustees to promptly contact an estate and trust settlement attorney -- or at least some other qualified advisor -- upon the death or incapacity of an estate owner.** Ideally your assets will have been positioned in a manner that avoids probate. Failure to promptly determine whether this is the case, and to take and properly document any appropriate action, can haunt your beneficiaries and their pocketbooks for months and years in the future, as can failure to file required personal or trust or estate income tax returns, to file any necessary estate tax returns, to make appropriate tax elections and to take other appropriate "post-mortem" tax planning steps.

**Number 4: Not positioning your assets properly, i.e. in a way which complements your estate planning.** It would be a pity to have a well crafted set of estate planning documents -- wills, trusts, powers of attorney for property, health care directives -- and not have your financial accounts, retirement accounts, insurance, annuities, real estate, business interests and other assets owned by or payable to the appropriate trusts or beneficiaries. Your estate planning attorneys should absolutely be facilitators of this process. If they don't make it clear at the initial consultation that they are, don't hire them. If they fail to follow through, fire them.

**Number 3: Failure to periodically have your estate planning documents and your asset positioning circumstances periodically reviewed by qualified professionals.** You should meet with your estate planning attorneys every 3 to 5 years. Wow, that could get expensive, right? Not if your estate planning attorneys offer a free

update review every 3 to 5 years. At the review sessions, it's wise to involve other trusted advisers as well -- money managers, financial advisors, accountants -- either in the meeting or as a follow-up to the meeting.

**Number 2: Doing Nothing. Basically, if you have "stuff," as the late George Carlin liked to call it, and you have loved ones, you need an estate plan.** If you're married with children, or if you're married with no children, regardless of your age, and you have an income, or two incomes, and believe it or not even if you have no "stuff," you need an estate plan.<sup>4</sup>

#### **And the Number One Estate Planning Mistake That Families Make:.**

**Thinking you're doing something when you're really doing nothing.** That's right; there's a lower estate planning lifestyle than doing nothing. Thinking, for example, "All our stuff is in joint names, so we don't need an estate plan." That could be an estate tax disaster for a married couple, because they will only get to use one estate tax exemption, not two. And it could be a disaster from a dispositive point of view if the surviving spouse remarries and is persuaded to put some or all of the inherited "stuff" into joint names with the new spouse.

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<sup>4</sup> If you have an income, it needs to be partially or fully replaced following your death. Your estate planning attorney can help you create the "stuff" you need to replace lost income, by referring you to a capable life insurance agent.

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## **Include a Charitable Bequest in Your Estate Plan**

**by Mia Lahti**

A charitable bequest is an easy way to make a future gift to your favorite charity in your will or trust. There are several ways in which one can provide adequately for their family, and still include charity in their planning.

The first is a general bequest which provides a specific amount of money, a percentage of your estate or a certain piece of property, to be given to charity at the time of your death. The second is a residual bequest which designates that the remainder or balance of your estate goes to your chosen charity, after your will or trust has made gifts to your loved ones. The third is a contingent bequest that takes effect only in the event that none of your heirs survive you. A bequest following income provides a regular income stream from a trust to your loved ones for a specified term of years, after which a percentage (or all) of the remaining amount can go to a charity.

Charitable bequests can be made through a will, living trust, or a beneficiary designation on a financial account. Your gift can be significant without affecting your current income or cash flow. As with other bequests, you retain full control of your assets during life.

As one of the attorneys who handles probate matters in our office, I have seen several examples of the charities to which bequests have been made. One example involves a

community foundation such as the Rhode Island Foundation. A community foundation provides grants that advance charitable activities and provide resources to address their community's needs. These organizations support a variety of programs ranging from arts, environmental, social service, and education programs.

Another type of charity to which clients have made bequests is animal welfare groups, such as Forever Paws Animal Shelter in Fall River and the Animal Rescue League of New Bedford. A third type of charity that our clients have supported through bequests are educational institutions, such as a high school (through scholarships), or a college. Other bequest examples include charities with an environmental mission such as the Nature Conservancy, and those with a focus on medical and healthcare (my personal favorite being Dana Farber Cancer Institute).

Through our clients' generosity, I have had the privilege on several occasions to inform worthwhile charities of the much-needed and appreciated bequests made to their organizations. Their gratitude is noticeably apparent, as our clients' gifts are put to sincerely good use.

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## Why Do Clients Seek Professional Estate Planning Help?

In collaboration with Trust & Estates and Registered REP, the estate planning trade organization Wealth Counsel has published the results of an "Annual Industry Trends Survey." The results summarized nearly 1500 respondents, comprised of 61% practicing attorneys, 27% financial planners, and 12% bank trust officers, CPA's and insurance professionals. Data was collected between September 5 and October 19, 2012. Margin of error was +/- 3% at the 95% confidence level.

One interesting question asked was "What would you consider to be the three pressing reasons that clients seek estate planning?" The answers in order of frequency were:

- **"Avoiding chaos / discord among those left behind."** Most senior family members want to leave a legacy of generosity, order and fairness to their loved ones. Chaos and discord are usually the results of improper planning, and can result in unnecessary and long lasting animosity within families.
- **"Minimizing estate taxes."** Death tax rates vary from state to state, but most agree they are an unfair burden on estates with assets that have been already heavily taxed as they grew. Why give the government even more money? All estates can be legally protected with proper estate planning.
- **"Avoiding probate."** Why go through the probate procedure when it's not necessary? Probate legal fees, executor fees, court cost, newspaper ads, etc. can add up to a large unnecessary expense for the estate. In addition, the lack of privacy and long delays caused by the probate process can be both embarrassing and frustrating.

Another interesting answer from the survey is in regard to the age of recent estate planning clients:

- **"67% of those seeking estate planning help in 2012 were between 50 and 79 years old."** Americans who are 50 years and older now own 65% of the aggregated net worth of all US households (US Consumer Expenditure Survey).

Americans are turning 65 years old now at a rate of 10,000 per day (WSJ). Those in their mid-to-late 60's are the leading edge of the affluent US baby boom generation, and there are plenty of Americans right behind them.

The survey provided information on the size of estates owned by married couples seeking estate planning help in 2012:

- **19% were \$5 million to \$2 million**
- **23% were \$2 million to \$1 million**
- **23% were \$1 million to \$500,000**
- **20% were less than \$500,000**

In other words, 15% of married couples seeking help had estates over \$5 million, 42% had estates between \$5 million and \$1 million, and 43% had estates less than \$1 million.

The survey also provided information on the size of estates owned by single clients seeking estate planning help in 2012:

- **12% were \$5 million to \$2 million**
- **22% were \$2 million to \$1 million**
- **24% were \$1 million to \$500,000**
- **31% were less than \$500,000**

11% of singles seeking help had estates of over \$5 million, 34% had estates between \$5 million and \$1 million, and 55% had estates less than \$1 million.

While all statistics are subject to debate, this survey of estate planning in late 2012 is large enough to be considered a statistically accurate sample, thus reflecting the status of the entire estate planning industry.

### Request a Speaker

To arrange a complimentary educational seminar regarding Estate Planning & Elder Law for a group of 25 or more people, please call our Providence office at (401) 331-0808.

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*This Newsletter should not be construed as legal advice but rather as general guidance on matters as to which you may wish to consult with a qualified professional advisor.*





## **An Interview With Senior Paralegal Laurie J. LaRoche**

*Interviewed By  
Brian McCarthy*

**1. I've heard it said that in some areas of estate planning, you know as much as some lawyers. What do you think?**

I would never say I know more than anyone, especially lawyers. I can say that my 30 years of experience in the legal field has afforded me an opportunity to work alongside some very knowledgeable attorneys and other professionals. I have been able to learn and grow with their help. Working as a paralegal exposed me to many other areas which allowed me to learn and understand how insurance, taxes, and investments, for example, impact estate planning.

**2. What percent of your skills came from your formal education in paralegal studies, and what percent came from on-the-job experience?**

Anyone would agree that formal education is beneficial to any field. However, there are so many things to learn on the job that cannot be found in a textbook. Hard lessons are not learned in a textbook, but rather through trial and error. I certainly agree that the bulk of my knowledge has most definitely come from on-the-job experience.

**3. Do you think that the paralegal profession is a good place to pursue a career nowadays?**

The paralegal profession is a very interesting one. If you enjoy working closely with attorneys and other professionals helping clients reach their goals, the paralegal profession can be very rewarding. It is not a profession where you learn a skill and move on and apply it. You are constantly learning and adapting to changes in the law and procedural changes.

I started my legal career when I was still in my teens, which allowed me to start at the bottom and work my way up. Over time, I learned all aspects of the legal profession and law office procedures.

**4. What have been the major changes in paralegal work since you first started?**

One of the major changes in paralegal work since I first started was the advent of the Internet. Today you can research just about anything on the Internet, which allows you to get split second answers that would have taken much longer researching in books and libraries.

**5. Is there a continuing education program for paralegals? If so, is it required?**

To my knowledge there is no formal requirement for continuing legal education for paralegals, although all are encouraged to continue their education. Many states have mandatory continuing education requirements for lawyers. Years ago, I was a member of a paralegal association in the Fall River, Massachusetts area. The organization would hold monthly meetings and have guest speakers. All professionals benefit from continuing legal education, whether mandated or not.

**6. What do you like best about being a paralegal? What do you like the least?**

The thing I like best about being a paralegal is working with families and helping them reach their estate planning goals. I have met so many wonderful and appreciative families. I also like the legal work. It is very interesting work and is ever changing, maintaining my interest. I really can't think of anything that I dislike.

**7. You are a notary for Massachusetts legal work, but not for Rhode Island. Why don't you become a notary for Rhode Island?**

When I first started my career in the legal profession, I was a Rhode Island notary. At that time, I resided in Warren, Rhode Island. I eventually moved to Somerset, Massachusetts and became a Massachusetts notary. Paralegals have to reside in the state to which they are applying to be a notary public. Attorneys are exempt from that rule, and can be notaries in multi states.

**8. Describe a typical day at the Lahti, Lahti & O'Neill, LLC office.**

Let's say there is no such thing as a typical day at Lahti, Lahti & O'Neill, LLC. I try to set a priority list and complete it each day. However, there are often client emergencies that take precedence over other things, which can throw off the whole day.

**9. What do you do with your free time?"**

In my free time you will find me exercising, reading, knitting, cooking, entertaining or gardening when weather permits. I keep very busy and don't have very much down time.

*Brian McCarthy is an independent marketing consultant*