



## 12 PROBLEMS THAT COULD COST YOUR FAMILY A FORTUNE IF YOU DON'T PLAN NOW

By

♦ Ralph Minto ♦ Brian J. Kahle ♦ Richard L. Osberg, III

♦ John A. Cochran ♦ Kim Orlando

Attorneys at Law

Minto Law Group, LLC

**Problem #1: Probate.** Probate is the Court-supervised process of passing title and ownership of a deceased person's property to his or her heirs. The process consists of assembling assets, giving notice to creditors, paying bills and taxes, and passing title to property when the judge signs the order. Probate can cost your loved ones a sizeable portion of your estate. The biggest portion of the costs are the fees charged by attorneys and personal representatives for their services for the estate, in addition to filing fees, costs of publication, fees for copies of death certificates, filing and recording fees, bond premiums, appraisal and accounting fees, and so on. Often the fees of attorneys and personal representatives are based on an hourly rate, and while they can tell you what their hourly rate is, they cannot tell you the number of hours their services will take, so they cannot tell you what their total fees will be. Because of its uncertainty in terms of both the potential for problems and high costs and fees, probate is something best to prepare for if you can. You can avoid a substantially larger probate process by having an estate planning lawyer set up and fund a Revocable Living Trust. Since the Trust actually owns your assets, no significant probate of the estate will be required, saving your family many thousands of dollars.

**Problem #2: Lawsuits and Creditors.** Life can take a lot of 'hits,' some of them good and some of them bad. For example, a marriage can 'hit the rocks,' a child can 'hit the books,' a loved one can 'hit the bottle,' a relative can 'hit the lottery,' a child can become addicted to 'hitting the tables,' or a family member can 'hit the skids.'

Such uncertainty in life can create some interesting situations and decisions while planning how to leave an inheritance to those we leave behind. Money truly is power, and it can fuel an addiction just as easily as it can fund an education. A revocable trust-based estate plan offers many planning solutions to the uncertainties that life has in store for our beneficiaries and can protect the property you have worked hard to acquire.

**Problem #3: Estate Taxes.** We have some good news and some bad news about estate taxes. The good news is that there is NO federal estate tax in the year 2010 -- no federal estate taxes are imposed on persons who pass away in 2010! The bad news is that under current law the tax comes back in full force beginning January 1, 2011, imposing a 55% tax on estates over \$1,000,000. The exemption amount is reduced to \$1,000,000 from its high of \$3,500,000 in 2009. So for married U.S. citizens, protecting your assets from federal estate taxes becomes all the more difficult beginning in 2011. One solution is to provide for a tax-saving credit shelter or

bypass trust in your estate plan. By setting up such a trust, you and your spouse could shelter or pass on to your loved ones up to \$2,000,000 before any tax is due. Without such a trust, beneficiaries would likely pay upwards of \$550,000 in estate tax on the death of the surviving spouse with a \$2,000,000 estate. Other ways you can avoid or reduce estate taxes include setting up (1) an Irrevocable Trust for your children, grandchildren or other heirs, (2) an Irrevocable Life Insurance Trust (which detaches your life insurance benefits from your estate), (3) a Charitable Remainder Trust, and (4) Second-to-die Life Insurance so you can pay estate taxes for pennies on the dollar.

**Problem #4: Income Taxes.** A family can lower its overall income taxes by setting up a Family Limited Partnership to own income-producing property. A parent can do this by setting up a Family Limited Partnership and making gifts of limited partnership interests to the other limited partners, normally their children or grandchildren who pay income tax at lower tax rates. A Family Limited Partnership is an excellent tool to shift income to partners who pay taxes at lower rates. It is also an effective way to make gifts and still keep total control of the property owned by the partnership.

**Problem #5: Lawsuits.** Protect your assets from lawsuits by doing any or all of the following, as appropriate: (1) purchasing an umbrella liability insurance policy, (2) setting up a Family Limited Partnership, (3) setting up a program for lifetime gifting, (4) setting up a Limited Liability Company, and (5) incorporating. Further, you can protect your children from lawsuits by putting their inheritances into an Asset Protection Trust. This is especially important if your children are likely to become professionals subject to potential malpractice actions or, on the other hand, are spendthrifts!

**Problem #6: Inexperienced Beneficiaries.** Protect your assets from being wasted by young or inexperienced family members. Most beneficiaries spend their entire inheritances in less than two years, regardless of the size of the estate or the heir's socio-economic background. Your lawyer can set up your Family Trust with protective provisions that provide guidance and safeguard your life savings, as well as the best interest of your beneficiary.

**Problem #7: Guardianships.** Protect your assets from the high costs of incapacity by (1) setting up a Living Trust so you avoid the need for a guardianship, (2) drawing up an Advance Healthcare Directive, and (3) drawing up a Health Care Power of Attorney.

**Problem #8: Nursing Home Care.** At age 70 a woman has a 1 in 2 chance of spending time in long term care; a man has a 1 in 3 chance. The average cost of skilled nursing care in Pennsylvania is approximately \$7,000-\$8,000/month. That means the majority of us must pay for the care ourselves -- or spend down our estates to get Medicaid benefits. Careful planning with an Elder Law attorney can find solutions to this growing problem and protect your assets. It is never too early to start planning.

**Problem #9: Unwanted Medical Care.** Protect your assets from unwanted and costly medical care by having an Advance Healthcare Directive and Health Care Powers of Attorney that spell out your instructions, including which medical care, treatment and procedures you want -- and which you don't want.

**Problem #10: Unwanted Emergency Care.** Protect your assets from unwanted emergency care. If you have a terminal illness, you can draw up and sign a Pre-Hospital Medical Directive

that will tell emergency personnel not to resuscitate you in the event of a medical emergency. This directive is often referred to as a “Do Not Resuscitate Order.”

**Problem #11: Ineffective Estate Plans.** Protect your assets from an ineffective estate plan. Don’t depend on pre-printed “cookie cutter” form kits or document preparation services for your estate plan. Contrary to what you may have heard or read, one size does not fit all! You may think you have precisely what you need. But you will never know -- because your family members will have to clean up the mess. You see, after you die, your family members will try to use your documents to settle your estate. And if the documents weren’t drafted correctly, they will cause additional expense and long delays because a probate will have to be done to convey title to your assets.

**Problem #12: Unqualified Lawyers.** Many attorneys are getting into estate planning because it’s less stressful than other areas of law. Not surprisingly, most of these newcomers almost never deal with issues affecting young families. If you have young children, make sure you choose an estate planning attorney who has experience in asset protection and estate planning for young families. This will help insure that the lawyer you choose has the knowledge, skill and judgment necessary to fully protect your family and your assets, and to give you advice and counsel that is in your best interests.

### You’re Invited to Call or E-mail.

“If you have questions regarding any of our firm’s practice areas or attorneys, please don’t hesitate to call. We pride ourselves on being a small firm -- with the highest level of knowledge, skill, judgment and experience. And we’ll be pleased to help you in every way.”

*-- Ralph Minto*

## MINTO LAW GROUP, LLC

*“Protecting What You Value”*

Two Gateway Center  
603 Stanwix Street, Suite 2025  
Pittsburgh, Pennsylvania 15222  
Telephone 412.201.5525 ❖ Facsimile 412.201.5526  
rminto@mintolaw.com ❖ www.mintolaw.com

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