This brochure contains generalizations and simplifications. Prior to implementing any estate plan, you should consult with competent tax and legal counsel who will need to assess your specific circumstances in order to determine whether any particular technique discussed in this letter is appropriate for you and can be implemented in a manner designed to achieve the potentially favorable outcome desired. This communication is not intended to be, and should not be construed as, U.S. federal tax advice for purposes of Circular 230 and may not be used for the purpose of avoiding penalties under the Internal Revenue Code or other federal law. Additionally, this communication is for education purposes and is not intended to be used for, and should not be used for, the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein.

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Top Ten Estate Planning Mistakes

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Top Ten Estate Planning Mistakes

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1.	**Failure to Create a Bypass Trust When First Spouse Dies**. Under prior law, the estate tax exemption was wasted when assets were left outright to the surviving spouse. Under current law, the deceased spouse's unused estate tax exemption is "portable" and, thus, can generally be used by the surviving spouse. In contrast, the deceased spouse's GST exemption amount is not "portable." Consequently, in order to secure each spouse's GST exemption, a bypass trust is essential. Additionally, a bypass trust offers significant nontax benefits in that it protects assets from creditors and can ensure that assets will pass to descendants of the first spouse upon the surviving spouse's death. **WARNING:** Providing for life insurance/retirement plans/your residence to pass directly to the surviving spouse prevents those assets from being available to fund the bypass trust, although there may be income tax/nontax benefits to that approach. Therefore, the impact of such an arrangement on the overall plan should be carefully considered.
2.	**JTWROS ("Joint Tenants with Right of Survivorship") Ownership Designation on Brokerage or Bank Accounts**. This designation prevents such accounts from being funded into the bypass trust when the first spouse dies, potentially <u>wasting</u> the decedent's estate tax exemption (and <u>costing up to $4,472,000</u> in extra estate taxes, assuming a $11,180,000* exemption). This also applies to "P.O.D." (pay on death) accounts. Multiple party accounts should be set up as <u>tenants in common</u>.
3.	**Failing to Protect a Child's Inheritance**. A child's inheritance that passes outright to the child is not protected from creditors, divorce, or estate tax at the child's death. To protect the inheritance, it is better to leave assets in trust for such child's benefit. If desired, the child can be named as the trustee of the trust.
4.	**Failure to Make Gifts to Reduce Estate Taxes**. Easy gifting options include the $15,000 annual exclusion, $11,180,000* lifetime gift exemption, and tuition/medical gifts. In a 40% estate tax bracket, each $15,000 gift saves $6,000 in estate tax.
5.	**Life Insurance Policies Owned by the Insured**. The proceeds of life insurance are subject to estate tax when the insured owns the policy. For example, $1 million of coverage taxed at 40% leaves only $600,000 coverage after tax. Transferring ownership of life insurance to an irrevocable life insurance trust (or having the trust buy new coverage) removes the proceeds from the estate, provided the insured lives for three years after the transfer.
6.	**Failure to Plan for Lifetime Contingencies/Disability**. This may result in a court-supervised <u>guardianship</u>. Plan ahead by executing a power of attorney, medical power of attorney, directive to physicians, declaration of guardian, HIPAA waiver, and living trust. Be wary of "standard form" documents.
7.	**Poor Planning for Retirement Plan/IRA Distributions/Beneficiary Designations**. Penalty taxes arise if retirement plan/IRA distributions are too small, too early, or too late. Devise a distribution strategy and beneficiary designations to maximize income tax deferral, but with due consideration of these penalty taxes. Consider designating a charity as beneficiary to avoid estate tax and income tax. If leaving retirement assets to children, consider naming a Conduit Trust as a beneficiary to protect assets from creditors/divorces but still qualify for a "stretch out."
8.	**Failure to Pursue Sophisticated Estate Planning Tools**. Explore techniques to reduce estate taxes and/or protect assets, such as "estate freeze" techniques and creative use of valuation discounts. Consider the family limited partnership ("FLP"), charitable trusts, qualified personal residence trust ("QPRT"), grantor retained annuity trust ("GRAT"), spousal lifetime access trust ("SLAT") and sale of assets to an intentionally defective grantor trust ("IDGT") or a "678 Trust."
9.	**Lack of Liquidity to Pay Estate Taxes**. Illiquidity can result in forced "fire sale" of real estate or a family business within nine months of death in order to pay taxes. In this situation, it is advisable to explore life insurance and plan for the orderly sale of assets.
10.	**Wasting GST Exemption**. This results in needless estate taxes at the deaths of children. Instead, consider segregating assets equal to the GST exemption in trust for the benefit of children for life and then to grandchildren, free of estate tax at each child's death.

*The $11,180,000 exemption amount used in the examples above is based on the exemption in effect for 2018. The exemption is indexed for inflation and will be adjusted accordingly in future years. Under current law, the exemption amount will be reduced by half on January 1, 2026.