



## **Ep. 184 Wills, Trusts & Big Mistakes: What Most People Get Wrong About Estate Planning**

### **Patti**

Hi everybody! Welcome to the Patti Brennan show. Whether you have \$20, \$20 million or \$200 million, this show is for those of you who want to protect, grow and *use* your assets to live your very best lives.

Joining me today is our Chief Planning Officer, Eric Fuhrman. We're going to be talking about a lot of things today, and primarily we're going to focus on estate planning. It's something that may be not relevant while you're alive, but certainly is relevant in terms of what you leave to the next generation or the causes that you believe in. Thank you so much for joining me today Eric.

### **Eric**

Thanks, Patti, always good to be in studio with you.

### **Patti**

So let's share with our listeners and our people watching the show today, the quote that you shared with me before we start.

### **Eric**

Yeah, no problem at all. I mean, I think we got an action-packed segment, so we've got a lot to kind of cram in on the time here. But you know, you and I sit down with a lot of clients of different circumstances, different you know, as you always say, seasons of life. Yeah, I love that's very kind of colorful way to kind of describe different phases. But one of the things that we deal with on a very regular basis is estate planning, which is, you know, what happens to the resources, both financial, tangible property, you know, when I pass away. And it's funny, I'm always, anytime we talk about estate planning, I'm always reminded of this quote by a woman named Barbara Hutton. So Barbara Hutton was born in 1912 and she was a philanthropist, but she was essentially the heiress to the Woolworth fortune, which was, you know, very substantial. But her quote was:

"I'd never seen the Brinks truck follow the hearse to the cemetery,"



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And for me, that's just very vivid. It's a reminder of her own mortality. We can't take it with us. You can't take it with you. But, you know, it's also a reminder that the resources we accumulate, the things that we place value on, ultimately, will be left to the next generation for their benefit, you know. So we think about estate planning and what it means and its importance, you know, creating that will, creating that that document is really, you know, kind of your final expression of love, but also an exercise in stewardship to ensure that those resources that we all have worked so hard for are responsibly and efficiently passed on. It's really one of the most unselfish things a person does because you're not going to get any benefit from it, but it's a living legacy, and there are things that people need to be aware of when they're thinking about this. It's not it's not just about taxes, it's not just about that stuff. It's really about what you want for the people and the causes that you're leaving behind. And there are ways, some ways, to do it that are better than others. You know, we just got the updated estate summary book. There are 48 different types of trusts that are just different types of trusts that people implement. And then on top of that, there's like 16 charitable trusts that provide income tax benefits, yada, yada, yada. So I think the really important thing is what kind of trust is appropriate, given what you want to leave behind, right? You kind of paint this very vivid picture of a toolkit, almost, you know, I'm opening the toolkit, and there's all these different things in there. Some are more appropriate than others, you know, some things might require a flathead screwdriver. Others might be, might be a Phillips head, right? Exactly, you know, some are better when interest rates are high. Some are better when interest rates are low. What exactly are we trying to accomplish, et cetera. So it's really, it is a living legacy.

### **Eric**

I think let's kind of get into this and reframe this whole idea of what estate planning is really all about. It's not only about saving taxes, although there are great tools to do so, but it's really about what's important to you. And by the way, what have you done lately? Is it up to speed? , I think it's important too, because this is a topic area that is so deep you can easily become overwhelmed. And certainly, if you've ever read a legal document, like a will or any of these power of attorney, sometimes they're not really written in a way that is necessarily comprehensible for the layperson, and it can be painful. Yes, it can be painful to try and read some of the legalese in terms of what it really means, for example. And I'm just going to give you a perfect example of this. They tend to be very thick, lots of paragraphs and these and thous and show shalls and wills and, you know, all that kind of stuff. So. But you know, when we begin to work with a client, we always say we don't want to be the first person, We don't want to be the fourth person.. But let us know if somebody gets a diagnosis that makes it kind of clear that they may not be, you know, living the long life and that recently happened. It's such an honor. I have to tell you, when we get those calls, because it's it's just so heartfelt that it's scary, and it really is. It's such



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an honor. Anyway, long story short, in this particular case, I went into their estate planning documents that were like three inches that voluminous, yes, and on page, like 161 there was one paragraph that said that the successor trustee shall provide a quarterly accounting to all of the beneficiaries of the trust. And I read that, and I said, You've got to be kidding me, the successor trustee is the spouse. She doesn't know how to do trust accounting. It's going to be overwhelming, and the kids are the beneficiaries. They're not going to care. So why would we put that burden? Because she is now a fiduciary, which you and I are as well. That's a really high bar. She's going to have to hire somebody pay 1000s of dollars every year to do that documentation. I called the attorney. I said, we need to take this thing out. And we did, yeah. So it's stuff like that. So static estate plans, even for people who have them, especially if they're older, they need to be reviewed on an ongoing basis, right?

### **Eric**

Yeah. So I think that's a that's a wonderful example where we can kind of really strip away the complexity and just get at the essence of, you know, what's important here. So you highlight this concept of static estate plans, and I think you're right. I mean, the way I would define a static estate plan, this is which, the way I think a lot of people tend to approach it, is that they go through the process. They may work with an attorney, they have their documents, and then they never review them or look at them. And the reality is, the problem with the static estate plan is that while the plan is essentially kind of a time capsule, if you will, life evolves. So think about family changes. If you have young children, when you draft the document, your children grow up and become adults. You know grandkids enter the picture. Your financial circumstances likely change drastically. You know, if you are starting out early in your career, and now 2030, years have passed, health status can change, but also, too do the documents incorporate the myriad of different contingencies you need to think about. So whether it is disability, for example, money falling into the hands of a minor, you know, all different types of things, even nowadays, digital assets. That was not a term that you might have used 15 or 20 years ago, but that was very relevant.

### **Patti**

It sure is. substance abuse clauses, even, even when the beneficiaries, even when the next generation, they're perfectly fine now, but we've got to think about, Okay, what if they're in a car accident and are rendered completely disabled. If you leave it, leave the assets outright to them that could disqualify them for government benefits. So maybe we put supplemental needs trust in there as a contingency plan. You know, things like that, the secure act, right? That's an income tax law that people don't realize has incredible estate planning implications. Because, you know, as we know, retirement plans, which is, oftentimes we we find that it's about 70% of a person's working capital they're in retirement



plans. Well, sorry guys, the wheel doesn't cover those so if you're leaving your 401, K at your employer, which you're welcome to do, just know that if you leave it there and one of your beneficiaries does get in that car accident 10 years from now, they have to jump through ridiculous hoops to qualify for the more favorable distributions, right? If it's in an IRA, so much easier. So little things like that can make a big difference. And by the way, we don't know if the kids are going to have a car accident. We don't know if the grandkids are going to develop substance abuses. So we want a lot of flexibility. We want to understand each family and the family dynamics.

**Eric**

I think what you're highlighting is important. Is it may seem excessive, but ultimately, the document needs to be flexible to deal with things that might have a low probability but a high severity. Right? and we need to plan for things that could be very bad, but we've got a plan in place. But I think, you know, you're highlighting a very expansive set of things that we have to think about with our family, with our kids and grandkids. Maybe you know future, you know errors that we haven't even met yet. But the other thing is law changes you know, think about in the time that, you know, we've been practicing, you know, good. Just go back 20 years ago. The law is drastically different. So the types of techniques and strategies that might have been very valid to include incorporating those documents, right? Yeah, to incorporate in your documents, you know, 15 or 20 years ago now don't have the relevancy, and if anything, they may actually make the whole process far more cumbersome. So like you know, to give you an example, you know, go back 20 years ago, this thing called the lifetime exemption. This is the amount of money that you can gift or pass on at your death free of federal income tax. Well, in 2005 that was 1.5 million. Today with this new tax bill that just passed, it's now 15 million, right? 10 times the amount. But I can tell you that the average household is not seeing their wealth increase at that, you know, right? And a lot of cases.

**Patti**

Especially during retirement, it tends to draw down, right? So to your point, that's really, really important, because, you know, when we were involved in the estate planning, we often talked about disclaimer provisions, because so many of those documents had mandatory trusts. Yes, if this, then this shall happen. I'm not a big fan of the word shall and estate planning documents, but it is what it is. But at least the disclaimer provision was a back door. Here's the problem. So if it goes into that trust, well, let me tell you, there's income tax ramifications also. So when we talk about these static documents, number one, do you want a mandatory trust? Number two, is there at least some flexibility with a disclaimer so that it doesn't have to go into the trust? And number three, what about powers of appointment? Right? Because that mandatory trust may grow to \$2 million but the exemption is 15



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million. And we now have something called portability, so a couple has \$30 million to lead to the next generation. But if you have this mandatory trust from an income tax perspective, sorry, I'm getting into the weeds here, guys, from an income tax perspective, the kids inherit.

### **Patti**

Let's assume dad died first, dad, you know the cost basis. So there's no step up in cost basis. So with the general power of appointment, there's some flexibility that you can put in there most powers of appointment. And I won't get in. I really am in into the weeds here. My point here is,

### **Eric**

that's okay. Nerd out, please.

### **Patti**

Okay, I'm a nerd, because this is so important. Eric, you know, we deal with this stuff all the time, and I tell you, how many times have we looked at someone's documents after the person died? And how many times have I said to you, God, I wish we had met these people or seen these before the person died, because then it's irrevocable.

### **Eric**

Yeah, so I think you highlight something really important there as you're kind of going through these different examples, which is, if these documents are older, you know, written some time ago, they may be designed to solve problems that no longer exist,

### **Patti**

perfectly said.

### **Eric**

So all you're doing is creating complexity, creating expense and rigidity where it's just not needed, you know, so that, and that's the key point, what you're talking about with that exemption, going from 1,000,005 to 15 million, and portability, you know, be for married couples, it was very common to use these trust concepts you're talking about, because that exemption was a use it or lose it bingo aspect where if you didn't use it when the first person died, effectively, less money could be passed on to your children and grandchildren. But now with portability, it preserves it right, which makes the whole estate planning process a lot simpler than it used to be.



**Patti**

It sure is. And even if you know, let's say that again, we've got mom and dad. Dad dies first, and he's got 6 million, right? Well, okay, you use 6 million of his 15. Okay, but guess what? The portability clause means the balance of that ports over. So mom has 15 plus, you know, the nine, yeah, remainder.

**Eric**

yeah. But in the old days, it was use it or lose it, so, but things have radically changed since then, and a lot of this too. I mean, it's amazing when you think back, you know, You know, the estate tax came around in 1916 so it's not like this is something new. It's been around for a long time, and it has evolved, but a lot has changed in really, since 2011 I think, for portability and other things like that. But it's been a very it's been a very fluid thing. So it's been very, kind of vexing to do planning for people, because there's just so much fluidity and the environment. And I think at least one thing we can say about the one big, beautiful bill is at least there's some more certainty.

**Patti**

100%. and that makes it so much better in so many ways. Again, I would also caution people to rest on their laurels, even if they update everything this year, because random changes can have significant impact. Again, using that example, when we think about estate planning, we are thinking about wills, right? And I want you all to know it's not an easy subject to broach, whether it be for yourself, your parents, even your kids, right? Things happen to children. I think that the impact of changes in legislation can't be over emphasized again because of the secure act and what that created in terms of a potential nightmare for beneficiary. So it's just one of those things to have a conversation with your advisor, with your estate planning attorney, even your CPA, to see whether or not there's something that you should be aware of. And by the way, there's something kind of a simple fix, and that is, a lot of attorneys are recommending putting a trust protector, or a protector in the document, so that, if it's not quite perfect, the trust protector can advise, right? They're not the trustee. They're a trust protector, if there are, in fact, these types of trusts. So that's another Quick Tip. Yeah, that's something you didn't see a long time ago, but far more common. But again, it's this idea of building in flexibility, the ability to deal with changes, you know, at the time. So that's a that's a key reason I really like that provision, also because it's something that can help after the fact. Remember, this stuff is irrevocable once a person dies. But if you've got a person, an expert who's named as a trust protector, at least, that can help things like, you know? I mean, Delaware used to be the trust capital of the world, right now it is not. Nevada is probably the best domicile for a trust. So can you move the domicile? Is that in the document? If it's not in the document, you can't do it, and Nevada doesn't tax their trusts.



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### **Eric**

So those are little nuances, little things that can make a difference. You know, as practitioners and dispensing financial advice, I think there's probably something more important here to highlight than someone that might have a static document, and that's people that don't have documents at all, which, and I think to your point, we have to be very mindful that, you know, this is a difficult thing to do, so there is no shame in the fact if you don't have documents. But that is more problematic, because even though you don't have a written plan, the reality is, the state has a plan for you, so you're just substituting your objectives, or how the state would ultimately distribute assets here, which may not be how you want.

### **Patti**

It's, it's so true and family dynamics are really important. You know, do you want to name the kids as a trustee of their siblings trust, that kind of stuff? You know, there's just, it's, it's just good to have conversations with people who have experienced, you know that that dynamic, you know, it's really important, and I think that the words matter. As you know, I recorded a podcast with Amy Bloom, who is a psychotherapist, and she was phenomenal. She is phenomenal, and she works with many of our clients, because approaching people is often kind of icky, especially when you're the child. Hey, Mom and Dad, how much money do you have? What am I going to get? It's not like that. And in this instance, what you're bringing up for people who haven't done a will, instead of asking the question, why have it like, Let's you and I role play this, Eric, and by the way, we're just winging this, as we always do. So pretend that you're, you're you and I are talking, okay, right? And I'm gonna and I know that you have one, so I know you're good, but I'm gonna say, Eric, why don't you have a will you?, How does that feel? And then I'm going to ask a different question,.

### **Eric**

I guess it makes, makes me defensive, I guess a little it's a little abrasive. I suppose they kind of open up the topic, especially, you know, depending on who you are, you know, are you, let's say a friend or professional, you know, maybe the child. It's a shaming thing. It's anything starts out with the word why? It's almost like you're shaming the other person.

### **Patti**

Let me try something different. What if I said, Eric, I love you. I think you're just amazing. And I'm wondering what's holding you back from getting a will, is there anything that I can do to help you with that?



**Eric**

I would answer that right away. And anything else you wanted to know. Much more approachable.

**Patti**

Yeah, it makes it, you know, makes it easier to digest. You come from a place of love, right? You know, this is really important, and I don't want you to think that I'm getting grabby pretend I'm the kid, right? I could care less. I just want to make sure that, you know, I'm doing what is necessary to make it as easy as possible for you to do this right, you know, whatever. I could take you to an attorney, etc. I could, you know, and again, people will approach this differently, but just come from the spirit of love, and get rid of the word why?

**Eric**

Yeah, exactly why. I like that approach. It's, again, it doesn't make the person feel bad and so forth. They're more likely to be open. Well, I would say, you know, we're covering a lot of different topics here, but, you know, how about we speak to, kind of how we do things that here at key financial when it comes to estate planning. And I think really, the role of facilitator, you know, more so than anything, because even a financial advisor like us, we're not drafting the legal documents, but I think we're acting more as a facilitator of information, yeah, you know, to help them ultimately achieve the objective.

**Patti**

I think from that perspective. Eric, well, what I've always tried to do, and I know you do, and everybody here does, is to really understand what's important to the family, right? Is it something that you know, and it depends on their their life too, right? So we talk about living transfers. Do you want to wait until you die to give the kids all the money, or do you want to do living transfers? Well, then in that case, we've got to run the numbers to make sure that you're not 80 years old and needing long term care, and look back and say, Gosh, I wish I hadn't done that. Let's not let's make sure that that doesn't happen. Okay, so just to kind of model things and project out and really find out what's important to the family, because lifetime gifts can save, certainly inheritance tax here in Pennsylvania, and there are pros and cons. You know, it's a gradual transfer. You can see how the family handles it, what they do with it, you can mentor, help them, guide them, set up accounts, teach them about money, things of that nature. So you know, it's it's very soft. Yes, there's lots of trust, and there's lots of things that can be done. Most of them are going to be overkill. Let's not do overkill. Let's do what's appropriate. And listen. That's the most important thing that I think that we can bring to the table, is listening. Now I will also say, as you well know, we have access to some of the brightest minds, both here locally and throughout the nation, and we've kind of been doing this for a while, so we can take





the best of each, you know, law firm or what have you, and then compare it and say, you know, you might want to think about A, B or C, right? That's basically what we can do. We're not telling people what to do. We're not attorneys, we're not CPAs. But when you've been doing this a while, you kind of know what works, and especially what doesn't work.

**Eric**

Yeah, I think the big, the big part is we kind of go through it with so many people is, again, a lot of people that have documents don't quite understand, really, what they might have, and they don't see the blind spots, you know, necessarily. And sometimes that requires, you know, change, and sometimes it doesn't. But I think it just, you know, what I always find fulfilling is the ability just to provide, you know, education, clarity, understanding.

**Patti**

the way that you communicate is so clear. Like, I get into the weeds a lot, and I don't want to overwhelm people with that. And yet, I want a sense of urgency that, you know. So I just asked the question. I mean, I will tell you a story of clients of ours, where they had, they had, they had the documents. They were using their documents as a core, and they were updating them. And what they didn't realize, because they were using different Attorneys, nobody was looking at the other stuff, right? And so when I laid it all out, and I got to tell you, sometimes it takes forever to read through these documents and really think I'm through, and I'm going to tell you--

**Eric**

I'm only chuckling because I know exactly what you're saying,

**Patti**

Yeah! In this particular case, it was so complicated, I actually called another attorney that we work with and ran it by them. I said, you know, this is the way that I'm interpreting this. Am I off base? Is this what saying? What I think it is saying? And the attorney said it absolutely is. So I called the client. I said, here's what I'm reading. So was it your intention to disinherit a grandchild? No? Well, this is what this could mean. I don't know. I'm not an attorney. You might want to talk to your attorney and maybe change the language of it. So that's where an extra set of trained eyes can help. That's all we play.

**Eric**

Yeah, I think the other benefit too, when you think about this, because there's important advisors in anybody's life. There's a financial advisor, there's an attorney, there's a CPA, but to some extent, I feel



like a lot of those you know, those areas are siloed, and I think one of the things that we can help do is create an impetus to action and help all those different parties communicate to get things done. Because I think a lot of times you might have great documents, but they might not be effective. Other components are not congruent, yes, with you know what they've set up there, and they may not be updated with some of the nuances and the new things that people are adding to their estate plan. You know, we've covered so many good things here, a lot of topics, but I think, you know, for the listeners here, maybe the most important thing is just say, what are kind of the action items, whether the takeaways.

**Patti**

I will say, You are so much more articulate than I am. As I said, I nerd out right away, and I get really passionate, especially about this subject. So thank you so much for framing things.

**Eric**

Oh, well, listen, I'm feeding off of the excitement. I mean, that's what it's all about. Excitement, enthusiasm, absolutely.

**Patti**

And this is a really dry, boring subject, and one people don't want to talk about usually. So to your point, the takeaways that I personally want everybody to get, is that remember that the will only covers non retirement assets. Your retirement assets, life insurance go by beneficiary designation. So it's really important to double check beneficiary designations. We are going through a nightmare situation right now with beneficiaries. Their dad passed away and there's no beneficiary. It's ridiculous. Two states are fighting yada yada yada, so just verify that there's beneficiary designations on retirement accounts, because the will doesn't control those. That's TAKEAWAY NUMBER ONE, especially since for most people, it's at least 70% of their assets.

**Eric**

Yeah, yeah. I think that's a great takeaway. Is not to just feel comforted that your will is going to dictate what happens because of that life insurance to company benefit plans. So I think that's a great point there.

**Eric**

And I think the other, you know, the other part here, you know, there's a lot of focus on the new tax bill and the law, but I think that's actually a good thing for most people. It just means that more people



are less likely to face a federal estate tax because the limit is now so high, and because of that concept, you talked about portability, and it just, if anything, for estate planning, it creates something that we haven't had for a very long time, which is just a sense of permanency, right predictability, so that that aspect of the tax law, I don't think, has changed anything other than just giving us a long runway of predictability, which is not something people in the estate planning profession have had for quite some time,

**Patti**

I don't know about you, but I was pleasantly not surprised, but I was very happy to see that this new tax law included portability remains and the cost of living increase also remains for both parties, so that \$30 million a couple can leave is increasing each year. That's a big deal. That's really important to keep in mind. So I think that a lot of the tools, a lot of the estate plans out there, if it's been over five years, oh my goodness, it absolutely needs to be reviewed, not necessarily with a fine if your financial advisor is interested, and can do that great, certainly with a qualified attorney, have your have your documents reviewed, make sure that your powers of attorney are up to speed, etc. Yeah, absolutely. I think beyond that five year point, that's when you know you've gotten a static Estate Plan on your hands, and it definitely has to be reviewed. It's not, I mean, again, it's, it's one of the most unselfish things a person is going to do.

**Eric**

Absolutely right.

**Patti**

All right. Thank you so much for joining me today. I love talking with you about the subject. Your ability to break it down very simply is just off the charts. Thank you for everything that you do for me as well as all of our clients, and thanks to you for joining us today. Remember, go to our website, ask whatever questions you might have. We are going to do a follow up on this topic so that you can ask your questions and I'm going to answer them. That's why we do these podcasts. That's why we exist. Because people don't know where to go, right? And they don't know who really cares about this stuff, and Kind of knows what they're talking about? Again, I'm the first one to say I don't know everything, but we usually know people who do so thank you. Eric Fuhrman, thanks to all of you for joining me. Go on the website, put your questions there, let us know what you want to hear about. That's why we do this. We're grateful for you! Have a great day.