



# **THE TOP 20 INSURANCE PLANNING MISTAKES IN ESTATE PLANNING (AND, HOW TO AVOID, OR AT LEAST FIX THEM)\***

**HOUSTON BUSINESS AND ESTATE PLANNING COUNCIL  
RIVER OAKS COUNTRY CLUB  
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1. Avoiding the three-corner life insurance policy – a different owner, insured, and beneficiary – the Goodman problem

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2. Creating phantom income by surrendering a policy (or letting a policy lapse) which was subject to an outstanding loan

3. Exchanging a policy under Section 1035, which is subject to a loan, for a new policy, not subject to a loan in the same amount.

4. Borrowing against or withdrawing from a modified endowment contract (a “MEC”), or using such a policy as collateral for a third party loan.

5. Borrowing against a policy in excess of the owner's income tax basis and then transferring the policy subject to the loan as a gift to a new owner.

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6. Surrendering a policy for its cash value without checking the life settlement market.

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7. Calculating the amount and character of the gain on a policy sale in the settlement market.



8. Determining adequate and full consideration for the sale of a policy to an ILIT or a spouse (prior to a gift to an ILIT) to avoid the three year rule of Section 2035.

9. Avoiding the transfer for value rule where the policy is sold to an ILIT to avoid the three year rule of Section 2035


10. Transferring a policy from the insured to a third-party owner (such as an ILIT) without obtaining the policy's gift tax value from the carrier, in advance.

11. Transferring a policy during the insured's lifetime without considering the transfer for value rule and its exceptions

12. Failing to restrict the insured's power to remove and replace the ILIT trustee by requiring any appointed successor trustee not be the insured nor a related or subordinate party to the insured.

13. For ILITs with Crummey withdrawal powers, not drafting the ILIT so that the Crummey power is triggered by both direct and indirect premium gifts to the ILIT.

14. Post-Final Regulation loan regime split-dollar arrangements that don't state adequate AFR interest, which are treated as term loans, especially those involving gift term loans.



15. Related party loan regime arrangements which could violate provisions of the Final Split-Dollar Regulations



16. Terminating a private pre-Final Regulation economic benefit, collateral assignment split-dollar arrangement without considering the risk that any policy equity on termination would be a transfer for transfer tax purposes

17. Entering into a post-Final Regulation private economic benefit split-dollar or loan regime arrangement for a single life policy without checking the other as an alternative, or, in either case, without having an exit strategy.

18. Not checking the availability of the insurer's alternative term rate (in lieu of the Table 2001 rate) for private post-Final Regulation economic benefit split-dollar arrangements for a single life policy.

19. Changing a pre-Final Regulation equity, collateral assignment private split-dollar arrangement without considering whether it could be considered a “material modification” of the arrangement.

20. Creating a non-equity, economic benefit collateral assignment split-dollar arrangement after the Final Regulations which isn't either a donor/donee nor a service provider/service recipient arrangement.