

THE SEVEN "MYTHS" OF ESTATE PLANNING

Estate planning can be a very confusing topic. People often make decisions about their estate plan (or lack thereof) on advice they get from non-attorneys or attorneys who only dabble in estate planning. In many cases, this advice is inaccurate, and can lead to unfortunate consequences. Here are the "facts" on some of the most common myths about estate planning.

MYTH #1 Only the "rich" need an estate plan.

FACT Good estate planning is important for everyone, regardless of the size of their estate. A proper estate plan puts you in charge of your assets and your medical decisions, even if you are sick or disabled. It allows you to avoid the costs and delays of Probate, and lets you choose who will raise your minor children if you die or become incapacitated. It can protect your assets from being consumed by the costs of long term nursing care.

Appropriate estate planning can also reduce or eliminate estate taxes. All assets are counted when determining the value of your estate, including real estate, personal property, retirement benefits and even life insurance. For every dollar above \$1,000,000 your estate is taxed at a rate of 41%. With a proper estate plan these taxes can be avoided.

MYTH #2 A Will avoids Probate.

FACT On the contrary, a Will guarantees that your individually owned property (such as real estate, stocks, etc.) goes through the Probate Court when you die. It is not unusual for Probate costs to consume 5-10% of the value of an estate. A Will's primary purpose is simply to tell the Probate Court who you want to inherit your assets and who you want to represent you in the Probate Court after your death.

MYTH #3 Adding someone jointly with rights of survivorship on your property is an effective estate plan.

FACT Many people use joint property as an estate plan because when one joint owner dies title to jointly held assets passes to the surviving owner(s) outside the Probate Court. However, this is only a temporary benefit; when the last joint owner dies the asset will go through the Probate Court.

There is also a significant loss of control when an asset is placed into joint ownership. For real estate, joint ownership prevents the original joint owner from selling the property unless the other joint owner(s) agree. As a result, if a joint owner becomes incapacitated, the Probate Court must appoint a Conservator to sign for that joint owner if the property is to be sold.

Joint owners can liquidate bank accounts or investments without the other joint owner(s) permission. Creditors of each joint owner

may try to attach to jointly owned assets to satisfy judgements against a joint owner. Making someone a joint owner of your property may result in needless gift, income and capital gains taxes. You may also disqualify yourself or the other joint owner(s) from receiving Medicaid or other governmental benefits.

MYTH #4 By utilizing a Living Trust you will lose control of your assets.

FACT By using a Living Trust you can actually retain control over your assets even if you become incapacitated or die. A Living Trust prevents your assets from going through the Probate Court. A Living Trust allows you to name the person you want to manage your assets during an incapacity or when you die. Unlike a Will, with a Living Trust you can direct not only who receives your assets, but when and under what conditions they will receive them (upon reaching a certain age, completing school, etc.). During your life, you can still buy, sell, trade, spend or do anything you choose with these assets. You can also revoke your trust or change its terms at any time.

MYTH #5 Everyone needs a Trust.

FACT Although Living Trusts have many advantages, they cost more initially than Wills because they require more expertise to create. If your assets will not be subject to estate taxes, if you don't care whether your assets go through the Probate Court, and if you aren't concerned

about the costs of long term care, then you probably do not need a Living Trust.

MYTH #6 Life insurance proceeds are not subject to estate taxes.

FACT When determining the value of your taxable estate, all assets you own are counted, even life insurance proceeds paid on account of your death. Proceeds can be protected from taxes by using a Living Trust or an Irrevocable Life Insurance Trust (ILIT).

MYTH #7 You can always do your estate plan later.

FACT As long as you are of sound mind, you can establish an estate plan. However, once you become mentally incapacitated you can no longer sign the necessary estate planning documents. If you die or become incapacitated without an estate plan the Probate Court decides: (1) who will make medical decisions and care for you, (2) who will raise your children, and (3) who will get your assets and how much they will receive. Married couples also lose significant estate tax exemptions upon the death of one spouse, if they have not already established a Trust based estate plan.

This brochure is not intended to give specific legal or tax advice. For specific information about planning your estate, contact one of our attorneys at Estate Planning & Elder Law Services, P.C.

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