ESTATE PLANNING & ELDER LAW SERVICES

COMMON ESTATE PLANNING MYTHS

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Estate planning can be a very confusing topic. People often make decisions about their estate plan (or lack thereof) on "things" they have heard from other people, who typically have no knowledge of the law. Usually, these "things" people hear third-hand are untrue or inaccurate, and can lead to unfortunate consequences.

Here are the "facts" on some of the most common myths about estate planning:

Myth #1: A Will avoids Probate.

Fact: On the contrary, a Will guarantees that all of your individually owned property will be placed under the control of the Probate Court when you die or if you become incapacitated. 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.

Myth #2: Adding someone jointly on property is an effective estate plan.

Fact: Many people use this technique as an estate plan because when one joint owner dies the property passes to the surviving owner(s) without going through the Probate Court. However, this is only a temporary benefit because when the last joint owner dies the property must pass through the Probate Court.

There is also a significant loss of control when this technique is used. For real estate, joint ownership prevents the original joint owner from selling the property unless the other joint owner(s) agree. If a joint owner has become incapacitated, a Probate judge must appoint someone on behalf of that person in order to sell the property. Joint owners may also withdraw cash from bank accounts or liquidate certain investments without the other joint owner(s) permission.

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Myth #3: 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 when you die or if you become incapacitated. A Living Trust prevents your assets from coming under the control of the Probate Court. A Living Trust allows you to name the person you want to manage your Trust assets during any periods of incapacity and after 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 #4: Everyone needs a Trust.

Fact: Although Living Trusts have many advantages, they cost more initially than a Will 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 must pass through the Probate Court, and if you don't have concerns about immature beneficiaries receiving an inheritance, then you may not need a Living Trust.

Myth #5: 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. Insurance proceeds can be protected from taxation by utilizing a Living Trust and other estate planning techniques, such as an Irrevocable Life Insurance Trust (ILIT).

Myth #6: 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 are found to be mentally incapacitated you no longer have the legal right to sign the documents necessary to set up your estate plan. Many people also think that their family can do their estate planning after they die. The truth is that if you die or if you become incapacitated without an estate plan a Probate judge decides: (1) who will make medical decisions and care for you, (2) who will raise your children, and (3) who gets your assets and how much they will receive. Married couples also lose significant estate tax savings upon the death of one spouse, if the couple has not already established a Living Trust.

Myth #7: Once your estate plan is done you can forget about it

Fact: Your estate plan should be reviewed periodically. Laws are constantly changing, and such changes may impact your estate plan. In addition, key life events may necessitate updates to your estate plan, including: marriage, births, incapacity, need for long term care, death, and a change in net worth – to name a few. If you are working with an attorney, they should keep you apprised of changing laws through webinars, newsletters, etc. It is also advisable to have periodic conferences with your attorney to discuss any such changes (at least every three years).