Common Estate Planning Myths

Estate planning can be a very difficult process. While it’s not brain surgery, making the decision to move forward with the planning requires us to face the fact that we will not live forever. This thought can stop many people right in their tracks. Others talk themselves out of seeing a qualified attorney to put together an estate plan based on some of the following common myths:

**Myth #1: Only the Rich Need Estate Planning**

When we hear about estate planning on the news or read about it on the internet, it is usually in regards to a wealthy businessman or celebrity who made some error, did no planning, or has family members who are angry about the planning that was actually done. The topic catches people’s attention: Rich people have so much that surely they need planning and can afford to have the planning done correctly. By comparison, when the average person thinks about their own property and planning needs, they assume that it is not necessary because they do not have anything close to Bill Gates’ billions.

However, this could not be further from the truth. Estate planning is about more than just the money. While proper planning allows you to determine who gets your money and property upon your death, the planning process also addresses what happens if you become incapacitated and someone has to make decisions on your behalf--a far more likely scenario. If you have not done any planning, the court will have to appoint someone to make your medical and financial decisions for you. This can be very time consuming, expensive, and public. It can also wreak havoc on a family if they disagree about who should be appointed and how decisions should be made.

Even for those of modest means, who gets your hard-earned savings when you die is an important consideration. Without any planning, state law will decide who gets what—and many times, what the government’s best guess as to what you would want is contrary to what you actually want. But, because you did not take the opportunity to formalize your wishes in an estate plan, the state has to step in and do it for you.

**Myth #2: I Don’t Have to Plan Because My Spouse Will Get Everything**

For many married couples, it is common to own property or bank accounts jointly. If these assets are owned jointly or as tenants by the entirety, when one spouse dies, then the surviving spouse automatically becomes the sole owner. In most cases, this is the desired outcome for married individuals.

However, this approach can be dangerous. While it is convenient for assets to pass automatically to the surviving spouse, this outright distribution offers no protection. What happens if, after your spouse dies, you get into a car accident and are sued? If the assets you owned jointly automatically became yours alone, this money and property are available to satisfy any judgment that could be entered against you resulting from a lawsuit.

Additionally, what if, after you die, your spouse gets remarried? If the brokerage account you owned jointly becomes your spouse’s only, your spouse is now able to spend it all in any way he or she wants without any consideration for your wishes or the next generation. Your spouse’s new spouse could go out and buy a sports car with the money you intended to pass to your children. With blended families being common today, this is a real concern for many people.

Estate planning does not mean that you have to disinherit your spouse. Rather, it means the two of you can sit down and plan out what happens to your joint property and accounts upon either of your deaths, ensuring that the survivor is provided for and that any remaining money and property are gifted in a way that is agreeable to both of you.

**Myth #3: A Will Avoids Probate**

Many people believe that once they have created a will—whether drafted by an experienced attorney, or using a DIY solution or online form— they have avoided probate. Unfortunately, they are wrong.

While a will is a great way to designate a person to wind up your affairs once you have passed, determine who will get your hard earned savings and property, and, if necessary, appoint a guardian to care for your minor children, this document has to be submitted to the probate court to begin the process of distributing your money and property. The level of involvement by the probate court can vary depending on the circumstances, but this process is not private, as the will becomes a matter of public record.

*Summary Proceedings:* In some states, if the value of your estate (i.e., what you own at your death) is below a certain monetary threshold, then anyone who is entitled to inherit from the decedent can file a petition and have the property distributed outside of the traditional probate proceedings. The filing may require a court appearance and formal legal notice to anyone who might be interested before allowing your property to be distributed.

*Affidavit Procedure:* Some states allow for an affidavit to be used to collect and distribute a decedent’s money and property. In some states, this affidavit can be self-executed, while others require that the document be filed with the court. Generally, affidavits require the passing of time from the date of a decedent’s death—ranging from a few days to a few months. After that, a “successor” to the decedent (a spouse or heir) signs the affidavit and presents the affidavit to collect the decedent’s assets for distribution to his or her rightful heirs.

*Supervised Probate:* With this type of proceeding, the probate judge oversees every step of the administration process and has to approve of the Personal Representative’s actions. During a supervised probate, all pleadings and required documents have to be filed with the probate court and then served on interested persons or parties. This can be a very time consuming and expensive process. Each time the Personal Representative has to take an action, a legal pleading has to be filed and served on the interested party, which, in contentious situations, opens up the possibility for disagreements and attorneys’ fees.

*Unsupervised Probate:* In cases where there are no controversies and the parties all get along, an unsupervised probate administration may be the best option. In this situation, although the administration is not supervised by a court, there are still actions the Personal Representative needs to take, but the Personal Representative may not be required to file petitions and documents for each of those steps. However, a Personal Representative may be required to file some steps, such as the preparation of the inventory, with the court and the interested parties, but no corresponding hearing is scheduled. While this is less complicated and possibly less expensive than a supervised probate, it can still be time consuming and your financial and personal affairs would become a matter of public record.

We are here to help answer any questions you may have about estate planning, the estate planning process, or probate. Together, we can craft a one-of-a-kind plan to ensure that you and your family are properly protected. Give us a call today.