

Your Trusted Counselor

ESTATE PLANNING AWARENESS WEEK: DON'T FALL VICTIM TO THESE COMMON MYTHS

Next week is Estate Planning Awareness Week (October 18–24, 2021). To that end, this month's newsletter is geared toward helping you become aware of and better understand common estate planning myths. Left unaddressed, these myths can create serious trouble for your loved ones, often leading to intrafamily conflict, permanently damaged relationships, and lengthy and expensive court battles.

Myth #1: I did my estate plan a couple of years ago. I'm good!

If you have worked on your estate plan with an experienced estate planning attorney within the last few years, then you are way ahead of most people, and you should give yourself a pat on the back. Way to go!

However, life moves quickly, and even a couple of years can make a significant impact on the effectiveness of your estate plan to help you achieve your goals:

- Children can get married and have children of their own.
- People who you have named in your estate planning documents can move out of state, making them unable to handle those responsibilities when called upon.
- Your relationships with your chosen fiduciaries or beneficiaries can change or become complicated.
- Your beneficiaries can develop harmful addictions, marry financially exploitative spouses, or run into financial difficulties of their own.
- Your spouse could die or you could get divorced.
- The amount and types of property that you own can change.
- Changes in the law can cause your estate plan to have unintended tax or other consequences.

Any one of the above circumstances may be a good reason to meet with your estate planning attorney again to determine whether changes should be made to your estate plan. In many cases, even a quick phone call to discuss any changes with your attorney is advisable.

It is also essential to understand that some estate planning documents like your power of attorney or healthcare directive can, over time, become less effective from the perspective of certain financial institutions, business entities, or healthcare providers. If your circumstances change, it can be beneficial to review, update, and re-execute your estate planning documents. This will keep these documents relevant and effective when they need to be used.

Beyond the considerations above, a well-rounded estate plan requires a number of steps to ensure that the estate plan will work effectively when needed.

First, if you have a trust, have you funded it? Funding your trust means you have coordinated the ownership and beneficiary designations of your accounts and property to work with the trust.

For real estate, a deed must have been recorded with the proper government recorder's office. Most bank and brokerage accounts should be titled in the name of the trust if you want your trustee to control those accounts should something happen to you.

Second, have you checked the beneficiary designations on your retirement accounts and insurance policies to make sure they name the correct people or your trust? Life insurance policies should usually name the trust as beneficiary. Retirement plans may name a trust as a beneficiary, but be careful! **Naming a trust as the beneficiary of an individual retirement account or 401(k) has significant tax consequences and may not be advisable in many situations.** Speak with your tax advisor before changing the beneficiary designations on your retirement accounts.

Third, have you shared copies of your medical power of attorney and healthcare directive with your doctor and local hospital? Doing so can alleviate family members' worries about digging through your documents should you have a healthcare issue in the future.

Fourth, in some states, a financial power of attorney document that names an agent to act on your behalf must be accompanied by a signed acceptance document from the agent before it can be used. If you live in one of those states, has this step been taken? If not, your estate plan may not be complete.

Fifth, writing things down does not guarantee that misunderstandings will not arise among your loved ones or beneficiaries. In addition to the important work of documenting your wishes, you should talk with your loved ones to help them understand the kind of plan you have put in place, as well as the roles you want them to fulfill. Having open, honest communication with those individuals involved in your estate plan will minimize the chances for miscommunication and hurt feelings.

Myth #2: Avoiding taxes is the only reason to create an estate plan.

It can be easy to dismiss the need for an estate plan considering today's historically high estate tax exemption (\$11.7 million per person in 2021). Most Americans do not need to worry about estate taxes.^[1] However, tax avoidance is only one of many goals of estate planning, and in many cases it is not the most important goal. For example, planning for the orderly passing of your treasured heirlooms to avoid family discord may be far more important than tax planning in the long run. Alternatively, you may have children who are struggling financially or with substance abuse challenges, are in a rocky marriage, or work in high-liability professions. As a result, it may be crucial for you to ensure that whatever inheritance is left to those children is protected from loss to lawsuits, creditors, or divorcing spouses.

Myth #3: My spouse will get everything when I die.

This is another myth that is partially true but can lead to unfortunate conflicts and misunderstandings among family members. Under most state laws, if you are married and pass away, your spouse will inherit your property. Default laws that exist to divide up a deceased person's property if they have never made a will or a trust (called intestacy laws) typically allow the surviving spouse to inherit 100% of the deceased spouse's property. But in many states, if the surviving spouse is not the biological parent of one or more of the deceased spouse's children, then those children will typically have a right to some percentage of their deceased parent's property. In many states, that can be as much as 50%.^[2] As a result, your spouse could get a very unpleasant surprise shortly after the funeral from your children from another relationship when they demand their share of the estate.

Myth #4: A will avoids probate.

An all-too-common misconception is that having a will helps you avoid probate. This is simply not true—in fact, the opposite is true. For a will to be effective after your death, it must be submitted to the court to prove its validity. Only after the probate court has verified that the will is valid can the individual named in the will (the executor or personal representative) distribute the decedent's money and property during the probate process. People often confuse the benefits of a will with those of a trust. Trusts can avoid probate, but only if the trustmaker names the trust as owner of the accounts and property during the trustmaker's life or as the beneficiary of the accounts and property upon the trustmaker's death.

What You Can Do to Be Prepared

Understanding these myths can help you identify those areas of your estate plan that may need attention. Taking these essential steps to ensure that your estate plan is complete is crucial to its success. As your estate planning professionals, we are here to help you think through these challenges, avoid mistakes, and complete the necessary paperwork. Give us a call today so we can help you take these important steps in your estate planning.

^[1] However, this historically high estate tax exemption is set to expire in 2026 and reset back to \$5 million per person (adjusted for inflation); see I.R.S., Estate and Gift Tax FAQs (Feb. 19, 2021), <https://www.irs.gov/newsroom/estate-and-gift-tax-faqs>.

^[2] For example, in Florida, the amount in this example that would go to the decedent's children from another marriage would be as much as 50% (see Fla. Stat. § 732.102(3) (2021)).

WHAT KIND OF LEGACY ARE YOU LEAVING YOUR LOVED ONES?

Your family will be dealing with a lot of concerns if you become incapacitated or when you pass away. Don't add extra stress by failing to prepare for them! O'Connor Law Offices can provide you with peace of mind by drafting your Will, developing a full estate plan or assisting you with all of your wealth transfer needs. Call us today to schedule an appointment with Mona O'Connor to learn more.

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