

Misconceptions About Estate Planning

Many people don't know a lot about estate planning, and what they do know has been learned through stories of what happened to a family member or neighbor. These stories can be interesting, but they can also be counter-productive if they reinforce beliefs that lack any foundation. Below are some of the more common misconceptions about estate planning, and reasons why you may want to talk to an estate planning attorney instead of relying on your neighbor, to get a full understanding of this area of the law.

I am young and don't need estate planning

Even people in their 20s should consider basic estate planning. One misconception is that an estate plan is simply a will or a trust. In reality, an estate plan includes many documents, such as a power of attorney for finances, a health care advance directive, a HIPAA Release, memorial instructions, a documents locator checklist, etc. Young people should have several of these documents, even if a formal will or trust is put off until later. But if you have children, a will becomes essential so that you can name a guardian who should raise your children in the event of a worst case scenario. Absent such instructions from you, a person you might not have picked could be chosen for this most important job. Additionally, a will allows you to override Vermont's default plan for who should receive your assets, which while probably not the worst plan, is rarely the best plan to address an individual's particular concerns.

My estate is too small

Estate planning is more than just planning to minimize taxes. Good planning, no matter how large or small your estate, will allow you to control who receives your estate, in what manner and when. You've worked a lifetime to accumulate what you own today, and now you want to let the government decide how your possessions should be distributed? Not likely. Another thing to consider: costs associated with handling the death of a person of moderate means eat up a far larger *percentage* of the deceased person's estate than is the case with larger estates. For example, a \$50,000 estate could have 10 to 20 percent of the estate lost to estate administration expenses, whereas a multi-million dollar estate would likely have less than 5 percent of the estate spent on administration. This is why many estate planning attorneys contend that estate planning can be even more important for the survivors of moderate estates than it is for the survivors of large estates.

I have a Will, which is all I need

Wills are the most common estate planning tool used. However, there are pitfalls to relying exclusively on a will as your estate plan. First, a will comes into force only upon your death. If you become incapacitated prior to death, there is a lot that needs to be done that cannot be accomplished by even the best written will. Second, wills guarantee a probate process by the courts, which can be a time-consuming and needlessly costly experience that can be avoided by use of other estate planning tools. Third, wills are too often not coordinated with your assets that may be distributed according to beneficiary designations or other transfer mechanisms. Fourth, wills are not as flexible as other estate planning tools for addressing important concerns, such as protecting your children against their spouse who wants a divorce and half of your child's inheritance, protecting against a child's financial immaturity (even though they are an adult), and of course, addressing the most critical tax concerns such as protecting the decedent's estate tax exclusion, which varies in value from year to year, but which can provide an enormous tax break.

I have a living trust, therefore I must be in good shape

Living trusts are an excellent estate planning tool, provided they are properly funded. Oddly, I've had many clients bring in their living trust document and discovered it was not properly funded. There are a few valid reasons for not fully funding your trust, but the reasons target specific circumstances, which to date have not applied to these clients' situations. I've heard many excuses why living trusts have not been funded, but honestly, none of them have been good. If you have a living trust and it has not been funded, consider talking to an attorney who specializes in estate planning to learn if the trust should be funded. And if you are not sure if the trust is funded, you need to better understand what the trust is and how it works. Apparently this important information was not included in the fee when you established the trust.

My estate plan is in place, I don't need to do anything more

An estate plan works when nothing unexpected happens. Unfortunately, we cannot anticipate everything that may happen in the next few years, or decades, before you die. Estate planning should thus be a process, rather than a transaction. The plan should be reviewed every few years, with an eye toward what has changed in your circumstances (additional grandchildren, death of a child, purchase or sale of a business) and also what has changed in the federal and state laws affecting estate planning. Whenever you embark on a journey, the best laid plans rarely get followed to the letter. There needs to be some adjusting along the way. Such is also the case with estate planning.

Adam Bartsch, *Misconceptions About Estate Planning*, The Shelburne News, May 1, 2008.

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