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4 Estate Planning Myths That Refuse To Die

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Personal Finance

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- That's because estate planning is part of life planning.
- It can mean the difference between loved ones hoping they did right by you and knowing they carried out your wishes.

Estate planning remains one of the most misunderstood areas of planning. Over the years, I've met with people who "only needed a financial plan, not an estate plan" or "didn't need a financial plan, just some help with estate planning." I've also met with people who labeled themselves too young (or too old) to engage in estate planning. What they were all missing is that estate planning is an integral part of a comprehensive financial plan, not something that sits outside of it.

That's because estate planning is part of life planning. It's about defining and living out your legacy during your lifetime, enabling you to enjoy the impact it has on the people and organizations you support; ensuring loved ones who depend on your income are protected in the event of your incapacity or death; and ensuring your own wishes and preferences are communicated and can be met should you require long-term care, among other goals. It helps to answer important questions, including: Who will have the legal authority to act on your behalf if you're unable to do so during your lifetime, whether that's managing your assets or important healthcare decisions? And who is going to be tasked with making sure it happens?

To help clarify the role of estate planning in the financial planning process, it's important to debunk some of the most common myths, beginning with: Who needs an estate plan?

MYTH #1: Estate planning is only for the high net worth.

Estate planning is not only for those with high net worth GETTY IMAGES

Often, people believe that estate planning only benefits the uber `wealthy, but nothing could be further from the truth. If you own property and assets or have loved ones that depend on you to provide for their income or care, you have an estate and need a plan—regardless of your estate size. Estate planning is something everyone needs to engage in regardless of age, estate size, or marital status. If you have a bank account, investments, a car, home or other property—you have an estate. More importantly, if you have a spouse, minor children, or other dependents, an estate plan is critical for protecting their interests and their future income needs.

An estate plan can help you accomplish these and other important goals:

- Protect those who depend on you and your income during their lifetime.
- Name guardians for minor children.
- Name the family members, loved ones, and organizations you wish to receive your property following your death.
- Transfer property to your heirs and any organizations you've named in your estate planning documents in a tax-efficient and expedient manner, with as few legal hurdles as possible.
- Manage tax exposure.

- Name your executor and/or trustee – the individual(s) or institution you appoint to act as your proxy in settling your estate and distributing your property.
- Avoid probate, the court process for proving that a deceased person's will is valid.
- Document the type of care you prefer to receive should you become ill or incapacitated, including any life-prolonging medical care you do or do not wish to receive.
- Express your wishes and preferences for funeral arrangements and how related expenses will be paid.

MYTH #2: Estate planning is only about distributing my assets after I'm gone.

Legacy and incapacity planning are two areas of planning that encompass far more than managing your assets during or after your lifetime. Just like your goals, your legacy is unique to you and your family. While it includes important charitable planning goals and gifting strategies, it goes well beyond the monetary aspects to include passing down the values, experiences, hard work and memories that define your life and are important to you and your family in a way that's meaningful to you.

Incapacity planning helps you prepare for unexpected events at every stage of your life from naming a guardian for your minor children, to who will manage your affairs if you're no longer able to do so yourself, to the type of care you will you receive and who will oversee your care.

MYTH #3: A will can oversee the distribution of *all* of my assets.

A will is a legal document that instructs how your property will be distributed after your death. It allows you to name an executor, who is your personal representative charged with overseeing the distribution of your property and shepherding it through the probate process. Probate is the court process that's required to validate your will and transfer your assets.

However, certain assets may sit outside of your will. These include life insurance policies or qualified retirement accounts (401(k)s, IRAs, etc.) that have a beneficiary designation, as well as assets or accounts with a pay-on-death (POD) or a transfer-on-death (TOD) designation. These assets transfer directly to the named beneficiaries and are not subject to probate.

This is why it's so important to review your account beneficiary designations annually or whenever changes in your life occur. For example, if you divorce and remarry and fail to update the beneficiary designation on your IRA account to your new spouse, your ex-spouse would receive those assets upon your death. Even if your will and/or trust names your current spouse as the beneficiary or co-trustee, since these assets sit outside of your will or a trust, they are not governed by those documents.

If you're not careful, your ex-spouse could receive everything after your death GETTY IMAGES

In addition to a will, it's important to work with an estate attorney to draw up other important legal documents to protect your interests and the interest of your dependents and/or heirs. These include:

- A general, durable power of attorney to empower your "agent" to carry out any legal and/or financial decisions that have to be made on your behalf during your lifetime if you are unable to act on your own behalf. Unlike other powers of attorney extending specific or limited powers to a named agent, a durable power of attorney doesn't end if you become incapacitated. However, all powers of attorney end at your death.

- A living will, or healthcare proxy, is a legal document that enables you to specify the kind of medical care you do or do not want to receive in the event of illness or incapacity. It indicates who is empowered to make healthcare decisions on your behalf and spells out how you wish to be cared for, alleviating the burden on your family members and loved ones to make those decisions at a highly stressful and emotional time.
- While not everyone needs a trust, it can provide the confidence that you have a plan in place to help provide for the safe and accountable management of family assets and to direct their use and distribution in accordance with your wishes and objectives. It allows While you're alive, you remain both the trustee and the beneficiary of the trust, maintaining control of the assets and receiving all income and benefits. Upon your death, a designated successor trustee manages and/or distributes the remaining assets according to the terms set in the trust, avoiding the probate process. In addition, should you become incapacitated during the term of the trust, your successor or co-trustee can take over its management. All trusts fall into one of two categories: revocable or irrevocable. (Generally, a revocable trust becomes irrevocable at your death.) Within these categories, many types of trusts exist to fulfill a broad range of needs and objectives.

MYTH #4: Once I put a plan in place, I don't need to revisit it later.

Planning is never a "once and done" proposition. Your life, preferences and goals change over time, and may be also be impacted by outside influences, such as the financial markets, tax law changes and economic events. What if you marry or divorce, welcome a new child or grandchild, your minor children become adults, you move to another state, or experience the death of a spouse? All of these changes need to be reflected in your estate and legacy planning. That's why it's important to periodically review and update your estate planning documents, including your beneficiary designations and how your various accounts are titled.

Recently, the estate tax exclusion more than doubled under the Tax Cuts and Jobs Act of 2017. You want to make sure your plan addresses these changes and that you and your financial, tax and legal advisors remain abreast of any subsequent changes. This will be very important over the next few years since the current federal estate tax law is set to expire at the end of 2025. You also want to pay close attention to any state laws that may impact your planning if you reside in a state that imposes a separate estate or inheritance tax.

Communication is key

One of the most important steps in the estate and legacy planning process is communication. It can mean the difference between loved ones hoping they did right by you and knowing they carried out your wishes. The more you share, the easier it is for everyone involved. That includes sharing the location of the original copies of your legal documents, where you do your banking and investing, who holds your mortgage and credit card accounts, and where you store important passwords with the trusted individual(s) you have appointed as your executor and/or successor trustee. This is critical information for those you've appointed to act on your behalf in the event of your incapacitation or death.

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