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MYTHS WE TELL OURSELVES ABOUT ESTATE PLANNING

Estate planning can be a very difficult process. While it is not brain surgery, making the decision to move forward with an estate plan requires us to face the fact that we will not live forever. This thought stops many people in their tracks. Others talk themselves out of seeing a qualified attorney to create an estate plan because of the following common myths.

Myth #1: Only the Rich Need an Estate Plan

When we hear about estate planning on the news or read about it on the internet, it is usually in regard to a wealthy businessperson or celebrity who had no estate plan, made an error in their estate plan, or has family members who are angry about the actual plan. The topic catches people's attention. Rich people have so much that, surely, they need an estate plan and can afford to have it done correctly. By comparison, when the average person thinks about their own planning needs, they assume that their possessions are not worth enough to necessitate an actual estate plan.

But this thinking could not be further from the truth. Estate planning is about more than just 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 (unable to manage your own affairs) and someone has to make decisions on your behalf—a far more likely scenario. If you do not have an estate plan, the court will have to appoint someone to make your medical and financial decisions for you. The process can be very time-consuming, expensive, and public and can wreak havoc on a family if they disagree about who should be appointed and how decisions should be made.

Even if your means are modest, you should consider who gets your hard-earned savings when you die. If you have no plan, state law will decide who gets what, and many times, the government's best guess as to what you would have wanted is contrary to your actual desires. But because you did not take the opportunity to formalize your wishes in an estate plan, the state has to step in.

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

For many married couples, jointly owning property and bank accounts is common. If a couple owns accounts or property jointly or as tenants by the entirety, when one spouse dies, the surviving spouse automatically becomes the sole owner. In many cases, married individuals prefer this outcome.

However, this approach can be dangerous. While it is convenient for money and property to pass automatically to a surviving spouse, outright distribution offers no protection. What happens if, after your spouse dies, you have a car accident and get sued? If the jointly owned money and property automatically become solely yours, they are available to creditors to satisfy any judgment against you.

In addition, what if, after you die, your spouse remarries? If the brokerage account you owned jointly becomes solely your spouse's, they can now spend it all in any way they want with no consideration for either your wishes or the next generation. Your surviving spouse's new spouse could buy a sports car with the money you intended to pass to your children. With blended families being common today, this scenario 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 proactively plan what happens to your joint property and accounts when either of you dies, 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 by using a do-it-yourself solution or online form, they have avoided probate. Unfortunately, they are wrong.

While a will is an effective way to designate a person to wind up your affairs after 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, a will must be submitted to the probate court to begin the process of distributing your money and property. The level of the probate court's involvement can vary depending on the circumstances, but because the will becomes a matter of public record, the process is not private.

Summary Proceedings

In some states, including Iowa, if the value of your estate (i.e., what you own at your death) is below a certain monetary threshold, anyone who is entitled to inherit from you can file a petition and have the money and property distributed without the traditional probate proceedings. The filing may require court appearances and formal legal notices to anyone who might be interested before your money and property can be distributed.

Affidavit Procedure

Some states, including Iowa, allow an affidavit to be used to collect and distribute your money and property if the total value is under a certain amount. Often, the affidavit can be signed by a successor with priority, such as a spouse or an heir, to wrap up your affairs without court involvement, while other states require that the document be filed with the court. Generally, affidavits require the passing of time, ranging from a few days to a few months, from the date of your death. After the time has passed, your successor signs the affidavit and presents it to collect your money and property for distribution to your rightful heirs.

Supervised Probate

In supervised probate, like in Iowa, the probate judge oversees every step of the administration process and must approve your trusted decision maker's, or personal representative's, actions. During supervised probate, all required documents must be filed with the probate court and then sent to any interested persons. The process can be very time-consuming and expensive. Each time the personal representative has to take an action, they have to file a legal form and send it to the interested parties, which, in contentious situations, opens up the possibility for disagreements and additional attorneys' fees.

Unsupervised Probate

When there are no controversies and all the parties get along, 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 must take, but they may not have to file documents for each step. However, filing certain documents such as an inventory of your accounts and property with the court and the interested parties may be required, but there is no corresponding hearing. While unsupervised probate is less complicated and possibly less expensive than supervised probate,

it can still be time-consuming, and your financial and personal affairs will become a matter of public record.

We are here to 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. Call us today at 515-421-8543.

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