

Estate Planning Myths

As soon as I sign a Will, I will die.

There is no validity to this but is often used to justify procrastination. Some other reasons offered for not competing having a Will include: I am too poor; I will get to it tomorrow; I don't understand all this legal stuff; I can't afford an attorney.

I don't need a Will because I don't own very much.

Biblical principals would hold that all believers are charged to be stewards of all that they have been entrusted to. Consider the widow's mite. Many individuals have never added up what they own and thus fail to realize that more thought should go into how their assets are distributed. The cost of a Will is minimal compared to the protection it provides for everything you own. Think about how much it costs each year to insure your car.

The State of NC defines a small estate as follows: A small estate is one in which the net value of the decedent's probate assets **does not exceed \$10,000 or \$20,000** if the surviving spouse is entitled to the entire estate. The probate on such estate may be obtained either by

1. administration by affidavit, or
2. summary administration

I have a Will so my estate plan is complete.

What about all the assets that are not controlled by the Will- insurance, retirement accounts, jointly owned accounts, etc.?

What about the Durable Power of Attorney, the Living Will and the Health Care Power of Attorney documents? What about a Living Trust or a Charitable Remainder Trust document? Many of these may be important for you to have.

If you own real estate in another state, your estate will be probated twice without a Living Trust or other form of ownership.

Have your circumstances changed so that your plan needs adjustment? (Death, estate size, etc.)

The oldest child (son) should always be the Personal Representative after both parents are deceased.

What if the youngest child is a qualified attorney and the oldest is a procrastinator who dislikes dealing with business and finances? What does gender have to do with it anyway?

Successful business people have a good understanding of estate planning.

There are many people who have been successful in creating and running businesses who have not taken the time to even create an estate plan, much less understand what is involved. Many do not get around to it for the same reasons offered by less “successful” folks. Statistics continue to support the fact that 60% to 70% of the US adult population does not even have a basic Last Will and Testament.

The estate should always be divided equally among the children.

Most people choose to have the children receive equal shares in the estate and that is not a bad thing. The reality is that many factors may make that difficult if not impossible. For example, one child may have required more assistance by the parents while living and thus deserves less at death, if equality is what is desired. Another example arises when parents own a business or farm as the primary asset and not all the children are interested in farming or being in the family business.

If you don't have a Will or Trust when you die, the state you live in gets everything you have.

This is not true; the State of NC is only a recipient when there are no blood heirs as provided in the NC law of intestacy succession. In that case, it passes to NC for higher education scholarships.

In NC, your estate is shared with your children or your parents if you die without a Will. In addition, your children would receive their inheritance at age 18 and is not preserved for expenses like college, buying a home or beginning a new business.

My spouse and I have everything in joint ownership so we do not need a Will or Trust.

All assets are not subject to probate. As per the probate law of NC, assets with a beneficiary designation are not subject to probate; but all other assets are subject to probate.

Categorically assets that are not subject to probate include:

1. Assets held as joint tenants with right of survivorship,
2. Assets held as tenants by the entirety between husband and wife,
3. Life insurance proceeds and retirement plans and IRA proceeds, unless the estate is named as the beneficiary.

I need to have a Living Trust so I can avoid the high costs of probate.

In North Carolina, probate fees are 40¢ per \$100.00 of property subject to probate. Costs of probate are limited by statute to \$6,000. In addition to court costs, however, are costs of executor fees, attorney fees, and fees of other professionals involved in the estate administration. The nationwide average of attorney fees for probating an estate is between 3% and 8% of your assets. Although these other fees are not limited by statute, the probate court will review the fees to determine whether they are excessive.

My estate is set up so that it avoids probate, therefore I have no estate taxes.

Property within your control is subject to estate taxes regardless of whether or not it avoids probate. Proper tax planning can reduce or completely avoid estate taxes by changing your control over property. In 2009, estates do not owe estate taxes when less than \$3 million. Estate taxes disappear in 2010 and then come back to \$1 million thereafter. Often, couples can double these amounts with proper estate planning. This is a changing area of law, so stay tuned.

There are no taxes on my life insurance policies when they pay out.

There are no income taxes on the policies owned by the deceased but the IRS imposes estate taxes on the payout value of life insurance policies if the estate exceeds that year's exemption amount. For example if the net taxable estate, including life insurance policies, exceeded \$3 million in 2009, there would be an estate tax liability.

I have a Living Trust so I do not need a Will.

The Will is more than just a tool to distribute assets. If there are minor children, the Will is needed to name a guardian and trustee for the children. Also, the Will is necessary to collect and distribute any assets that were never moved into the trust.

Charitable estate planning is of little or no importance to the vast majority of people.

The reality is that attorneys often neglect to ask clients if they wish to include charity in their estate plans. Also, many attorneys are not trained in planned giving and do not understand options like charitable remainder trusts, charitable gift annuities and endowments. If this is of interest to you, make sure you ask about your options.