

Estate Strategies

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9 Estate Planning Myths

MYTH 1: Probate is a lot more expensive and lengthy than administering a decedent's Living Trust.

FACT: There are many horror stories about the expense and delays in probating a decedent's will. In Michigan, the probate process is simple and involves mostly paperwork. Unless the heirs or beneficiaries are fighting, a probate administration is usually done in about 6-9 months. It is possible that probate administration will cost more than a typical trust administration but the cost differential is rather small.

MYTH 2: Simply having a validly executed will avoids probate.

FACT: Not true. The fact that a decedent executed a will prior to his or her death is irrelevant to whether a probate administration is necessary. A probate administration is necessary if a decedent left property in his or her individual name without a beneficiary designation. Also, a will is not self-executing, i.e., a will must be admitted into the probate court and a personal representative needs to be appointed by the probate court.

MYTH 3: If I don't have a will, the State of Michigan will take all of my assets.

FACT: Without a will, your property will be distributed to your next of kin pursuant to a priority list contained in Michigan's Probate Code. The priority list often does not match a person's desire for distribution of his or her property. However, if you die without a will, the State of Michigan will NOT take your assets UNLESS you have no surviving family, or they cannot be located.

MYTH 4: Estate planning is only for the rich.

FACT: Many factors other than wealth affect the need for estate planning, such as: (1) caring for a minor or disabled child; (2) transferring ownership of property in accordance with your wishes; (3) caring for your surviving spouse or parent; (4) naming a guardian or conservator for a minor child; (5) transferring a closely-held family business; (6) transferring ownership of property in another state; (7) charitable giving; (8) avoiding probate; (9) avoiding taxes; and (10) care of pets. These are only a few of the many reasons to plan your estate. Each person has his or her own objectives, but owning a lot of assets is usually not the primary reason to plan.

MYTH 5: A Durable Power of Attorney for Health Care (also called a Patient Advocate Designation) is just for "old" people.

FACT: Under Michigan law, an individual 18 years of age or older can execute a Durable Power of Attorney and name an agent to make medical treatment decisions. It is also common to add a person's wishes and desires regarding life-sustaining treatment in such a document. It is just as important for a "young" person to have a Durable Power of Attorney for Health Care. Some of the most controversial medical situations have involved young adults who were unexpectedly incapacitated, e.g., Terri Schiavo, Nancy Cruzan and Karen Ann Quinlan.

MYTH 6: A trustee can distribute trust property to the beneficiaries immediately after the grantor of the trust dies.

FACT: Only a foolish trustee would do this. The trust assets need to be identified and valued. Often an appraisal is necessary. The trustee also needs to take care of paying the grantor's debts, final expenses and any death taxes. If the trustee distributes too early and is left with insufficient funds, the trustee is personally liable for those obligations. So, all of this takes time. It is also a Michigan Probate Code requirement to publish a notice to creditors in a local public newspaper, and the claims period runs for four months. It is usually unwise for a trustee to make any substantial distributions until after the claims period has expired. Furthermore, if there is a very large estate and a federal estate tax return is required, the trustee should only make partial distributions until final tax clearance is received from the IRS.

MYTH 7: Putting property in a revocable Living Trust restricts what I can do with the property during my lifetime.

FACT: No. A revocable Living Trust is created while you are alive and can be revoked or amended. Any asset placed in the name of the trust is subject to the control of the grantor/trustee (you). Therefore, during your lifetime (while you are competent) you can essentially do what you want with the assets. The trust is not a separate taxpayer and all income is reported under your own social security number.

MYTH 8: Putting property in a revocable Living Trust prevents creditors from accessing those funds or assets.

FACT: Not true. A revocable Living Trust does not provide any general creditor protection. Since a grantor of a revocable Living Trust has complete and full access to the funds or assets of a revocable Living Trust, a creditor can normally reach the property in such a trust. There are some irrevocable Living Trusts that provide some creditor protection.

MYTH 9: Once an estate plan is developed, the individual can forget about it.

FACT: Not true. It is necessary to periodically review and update an estate plan. Changes in the family situation, such as births, marriages, divorces or deaths of family members may make it necessary to name new beneficiaries, agents or fiduciaries. Revisions may also become necessary (1) if an individual purchases, sells or inherits assets, (2) if an individual retires, (3) if an individual moves to a different state, or (4) if there are changes in the estate and gift tax laws. In addition, your desires change over time as your family or children mature. Ideally, you should review and update your plan annually, but in any event not less than every three to five years.

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