5 Myths about wills and what you should really do

Nearly 60% of Americans do not have a basic will. There are all kinds of reasons for this oversight. Some people just have not gotten around to creating a will or trust. Others think they do not need an estate plan because they do not have much. Some people fear that as soon as they write a will, they will die.

In reality, there's no evidence to suggest that creating an estate plan will hasten you demise. This much is certain, though: You're not going to live forever. And if you die without an estate plan, you could leave a legacy of bad feelings and attorneys' fees.

Here are five myths about estate planning and tips on how to make things easier for your loved ones after you're gone.

1. **Estate planning is for rich people.**

   Unless you live in a cave and subsist on roots and berries, you need a will. A will allows you to designate who will receive your property when you die. If you die without one, your assets will be distributed under the terms of your state's "interstate succession" laws. That means your money and property could end up with family members you haven't spoken to in years, instead of a close friend or charity you support.

   Even if you don't have much money, most estate plans include a durable power of attorney for finances and a health care directive, those are two things everybody needs. These documents allow you to designate someone to act on your behalf if you become incapacitated.

In addition, a will allows you to name a guardian for your children if something should happen to you. Otherwise, a court will appoint a guardian, and it may not be the individual you would choose to bring up your kids.

A will doesn't have to be expensive. Do-it-yourself programs, such as Quicken's WillMaker plus and LegalZoom, are fine for a basic will. While some people fear these programs won't be honored in court, the law is pretty client-friendly with respect to wills. Judges want to honor people's last requests.

For a trust, you should hire an estate-planning lawyer. Even if your will is straightforward, you will be more comfortable hiring a lawyer to draft a trust.

2. If you die without a will, everything will go to my spouse.

Not necessarily, laws vary, but in most states, if you die without a will (intestate), your inheritance will be divided among your spouse and your children. In New York, for example, when someone dies interstate, the spouse gets the first $50,000 of the estate and what's left is divided 50-50 among the spouse and the children.

This can create all kinds of problems, particularly if your spouse was financially dependent on you or you have children from a previous marriage.

3. If you have a will, your estate won't go through probate.

All wills are subject to probate. In probate, a court determines whether the document is valid and ensures that relatives and creditors are notified. This process can take several months and drain thousands of dollars from your estate.

One way to avoid probate is to put your property into a living trust. A living trust is a legal document you create to hold property, such as a brokerage account and real estate. When you die the property is transferred to your beneficiaries. This transfer occurs outside of probate, which could save your heirs a lot of time and money.

Not everyone needs a trust. In some states, Probate is a very easy process, and it isn't necessarily something you need to avoid. Some states exempt up to $100,000 of gross assets from probate, such as California. In others, such as California probate is a slow and expensive process. In that case, setting up a trust could save your heirs thousands of dollars in legal fees.

If you own property in more than one state, a living trust "is a no-brainer." Otherwise, your estate might have to go through probate in several sates.

Another advantage to a living trust is privacy. A will is a public document, and anyone can come to the probate hearing to see if any fights break out. Living trusts "aren't published in any court-house, so people can't gain easy access to them."

4. **After I create a will or living trust, I'm all set.**

This is a common misconception and can lead to a lot of problems later on Once you set up a trust, for example, you need to retitle the assets you want to transfer to the trust. Otherwise, the document is worthless.

In addition, you'll need to periodically update your will or trust to reflect major life events, such as a divorce or the birth of a child. You'll also want to revisit your estate plan if you move to another state. You should meet with your attorney every

four or five years to discuss changes in your circumstances that could affect your estate plan.

5. **I could be held responsible for a deceased parent's debts.**

When you're grieving, the last thing you need is call from a debt collector, telling you you're responsible for Dad's credit card. Those callers aren't just intrusive they're wrong.

In general, children aren't responsible for a deceased parent's debts. Even a spouse's obligation to pay those debts may be limited, depending on state probate laws. (Surviving spouses should consult with an attorney.)

The estate is responsible for paying debts. If there isn't enough in the estate to cover the amount owed, the debts usually go unpaid.

If a debt collector contacts you, give the caller the name of the executor of the estate, of the administrator if your parent died without a will. The executor or administrator is responsible for setting the estate, including paying debts. Report any problems with debt collectors to your state attorney general's office and the Federal Trade commission.