Estate Planning: Top Ten Myths

By Rebecca Vicente, Esq.

Myth #1: If I have a Will, I can avoid probate.

Actually, the opposite is true for many people. A Will has to be submitted to the Probate Court, and the proposed Executor has to be approved by the probate judge, before your Executor will be able to legally act on behalf of your Estate. However, only assets that are owned solely by the deceased person need to be administered through the probate process.

This process can be as quick as a few weeks, or as long as several months or more.

If you have easy access to the original Will, and there is only one legal heir, or all the heirs consent in writing to the appointment of the Executor, then the Probate Court may "streamline" the appointment process. However, until the Probate Court issues its decree to formally appoint someone as the Executor of the Estate, then no one can access the deceased person's individually-owned assets. A bank or other financial institution will not turn over the deceased person's funds just because you have a copy of the Will.

If there are multiple heirs, and any discord among them, then the Probate Court may schedule a hearing before admitting the Will to probate and appointing the Executor. Depending on the issues raised by the heirs, the dispute may be resolved in a single hearing, or may lead to months or years of litigation.

Myth #2: My Will overrides any beneficiary designations or joint owners on my accounts.

This is false. Your Will only addresses what happens to assets that you own in your individual name, without a joint owner or a beneficiary designation. Your Will does not address what happens to assets that you have put into a trust.

Further, assets that you have transferred to an LLC are subject to the terms of any operating and/or buy-sell agreements for the business.

In other words, your Will is the last resort for determining how your assets will transfer to your beneficiaries. This can complicate matters when a person decides to add a child as a joint owner of a bank account, for example, so that the child can help with paying bills for an elderly parent. Upon the parent's death, that joint account generally passes by law to the named child. When there are multiple siblings, the apparent "preference" for one over the others can cause hurt feelings and possibly claims of improper conduct against the named child.

Rebecca Vicente
Hassett & George, P.C.
rvicente@hgesq.com | 860.651.1333 | www.hgesq.com

Myth #3: If I die without a Will, my spouse will inherit everything anyway.

Often, people are surprised to learn that this is not what happens. If you die without a Will, then there are rules in place for how your "probate assets" will be distributed. Keep in mind that any assets owned jointly with your spouse, or that name your spouse as beneficiary, will pass to your spouse outside of the probate process.

Who inherits your probate assets depends on the makeup of your family:

- If the deceased person has no living descendants or parents, then the spouse inherits 100% of the probate assets.
- If the deceased person has surviving parent(s) but no descendants, then the spouse inherits the first $100,000 of the probate property plus 3/4 of the remaining property. The surviving parents inherit the balance.
- If the deceased person has surviving descendants, all of whom are also descendants of the surviving spouse, then the spouse inherits the first $100,000 of the probate property plus 1/2 of the remaining property. The descendants inherit the balance. This is true even if the children are minors.
- If the deceased person has surviving descendants, any of whom are NOT also descendants of the surviving spouse, then the spouse inherits 1/2 of the probate property. The descendants inherit the balance. Again, this is true even if the children are minors.

Also keep in mind that if there are minor children involved, that a guardian (not your surviving spouse) will need to be appointed to protect their interests during the probate administration, which adds additional stress and complexity to the process.

Myth #4: After I die, my financial power of attorney can manage my assets until an Executor is appointed.

Once you die, your financial power of attorney is no longer valid. At that point, your Executor (if you have a Will) or your Administrator (if you do not have a Will) is the person who will be responsible for managing your estate. This may be the same person who was helping you to manage your finances during your lifetime, but there will be a gap in time between the date of your death and the date that your fiduciary is given the legal authority by the Probate Court to access your financial assets.

To avoid that interim delay, many people choose to create a trust-based estate plan. Unlike a Will, the successor Trustee of your Trust does not need to be formally appointed by the Probate Court to be able to manage the assets in your Trust, and can instead step in immediately to begin the process of administering your Trust.

Rebecca Vicente
Hassett & George, P.C.
rvicente@hgesq.com | 860.651.1333 | www.hgesq.com

Myth #5: I can give away up to $19,000 per year without incurring a penalty if I need long-term care benefits.

Many people confuse the annual gift exclusion for estate and gift taxes with the rules for qualifying for Title XIX or Medicaid. These are in fact two completely different systems with completely different sets of rules.

For estate and gift tax purposes, individuals can give away up to $19,000 per person per year without having to file a gift tax return with the IRS. Once you give more than $19,000 to any one person in a calendar year, then you must file a gift tax return, but until you have given away more than the current lifetime exemption amount of $13,990,000 (for 2025 federal or Connecticut tax purposes), then there is no actual tax due. The return is informational only, and will be referenced again only upon your death.

That does not mean that you won't have a problem with the CT Department of Social Services if you need to apply for long-term care benefits. There is NO acceptable gifting limit within the Medicaid rules, and any gifts can cause a "penalty period" even if you are otherwise qualified for coverage.

A penalty period is a period of time when the State of Connecticut will not pay your nursing home costs, and the time period is based on the average monthly cost of care in a nursing home. Since the average cost of care in Connecticut is about $15,000, for every $15,000 or so that you give away, there is a one-month penalty period. So, if you give away $19,000 per year to each of your 3 children, for a period of 5 years, then there is a 19-month penalty period.

The point to remember is that tax rules only apply to tax issues, and different long-term care rules apply to long-term care eligibility.

Myth #6: I can save estate taxes if I have a revocable trust.

There are many misunderstandings related to this issue!

First, it is important to realize that most people will not have to pay any estate taxes when they die. Currently, an individual taxpayer must have ownership of over $13.99 million in assets before any estate tax would be due to the State of Connecticut or the federal government. For couples, those amounts can be doubled – each spouse has their own exemption available. A revocable trust CAN help to ensure that the exemption amount for married couples is maximized. Currently, those amounts are scheduled to drop in half by the end of 2025.

Second, a revocable trust is treated as the individual taxpayer for most purposes. It does not need a separate tax ID number while the trustmaker is alive, and income earned by assets in a revocable trust is reported on the trustmaker's individual income tax return during his or her lifetime. So a revocable trust is essentially tax-neutral during your lifetime.

Rebecca Vicente
Hassett & George, P.C.
rvicente@hgesq.com | 860.651.1333 | www.hgesq.com

For families that DO need estate planning to minimize their potential estate tax liability, then a variety of other trusts and other vehicles may be utilized, but a revocable living trust does not accomplish this goal.

Myth #7: I can put all of my assets in a trust to avoid paying for nursing home care later.

Planning for long-term care is complicated, and there are many rules that need to be followed for the plan to be successful.

For an asset protection plan to work, you must first be willing to give up some or all of your rights to use the assets that you are trying to shelter. In order for an asset to be "non-countable" for Medicaid or Title 19 purposes, it cannot be available to you. That means either giving the asset away outright, or transferring the asset to an irrevocable trust where you are not a beneficiary. Since a revocable trust is intended to be used for your own benefit during your lifetime, and you continue to have full freedom to take assets out of the trust at will, a revocable trust does not provide you with any asset protection.

Long-term care planning is useful in many circumstances, such as when you have saved more money than you think you will ever need for your retirement years, and your primary goal is to pass on that wealth to your family. It is not appropriate for all families, however, and should only be undertaken with the advice and counsel of a competent lawyer.

Myth #8: I don't need an estate plan, since I just added my kids as joint owners on my accounts.

There is more to estate planning than simply adding joint owners to bank accounts, and there are dangers to adding a child or children as joint owners during your lifetime.

First, adding a joint owner does not help you in the event that you need someone to assist with your medical care. Every estate plan, no matter how simple or sophisticated, should include advance health care directives such as an Appointment of Health Care Representative, a comprehensive HIPAA authorization, and a Living Will if you do not want extraordinary measures taken at the end of your life.

Second, you may have assets that do not permit you to easily add a joint owner, such as retirement accounts. In the event you become disabled, you need to have a financial power of attorney in place to allow your preferred agents to quickly access those funds.

Third, by adding a joint owner to an asset, you have now created the possibility that that asset may be at risk for the joint owner's financial liabilities. If the joint owner gets sued, or has significant medical expenses and needs to declare bankruptcy, or gets divorced, then your asset may be subject to attachment or judgment.

Rebecca Vicente
Hassett & George, P.C.
rvicente@hgesq.com | 860.651.1333 | www.hgesq.com

Myth #9: I have a Trust, so I don't need to do anything with the probate court when I die.

While one of the attractions of a trust-based estate plan is the avoidance of the probate court process, you can't avoid probate court entirely in Connecticut.

Connecticut is one of several states that has its own estate tax laws. That means that every Connecticut resident is required to file an estate tax return, to establish whether or not any state estate tax is due (which is only the case for estates worth more than $13.61 million). If the estate is less than $13.61 million, then the estate tax return only needs to be filed with the Probate Court, and not with the Department of Revenue. In any event, the Probate Court calculates its statutory fee as a percentage of the value of the estate.

Because many people are unaware of this law, the state has also provided that an automatic lien will attach to real estate in Connecticut upon the owner's death. That lien is for any estate tax due and for payment of the probate court fee. Until any taxes due and the probate fee are paid, no one has clean title to be able to sell that property.

However, with a properly funded trust plan, the filing of the estate tax return may be the only contact that you have to have with the Probate Court, which minimizes the time, expense and delays of administering your estate.

Lastly, by adding a joint owner to an account, you may unwittingly cause discord between family members. Most often, upon your death, that joint asset will pass directly to the joint owner. If you have more than one child and your intention was that all of your assets be divided equally among the children, you will have to trust that the child named as joint owner will honor those wishes and share that account. Unfortunately, there are too many instances where siblings have a falling-out because one of them inherited more than the others to leave this outcome to chance.

Myth #10: I like the idea of a Trust, but I don't want to give up control of my assets.

With a revocable trust, you remain in complete control of your finances for as long as you are competent to manage your own affairs.

A revocable trust is intended to be as flexible as possible for you during your lifetime. "Revocable" means exactly that – you can revoke or terminate the trust at any time. You can amend the trust terms at any time.

You will generally act as the "Trustee," or person in charge of managing the trust, and you will be the "beneficiary" of the trust, meaning that the trust assets are intended to be used for your benefit. You can continue to have access to the assets of the trust just like you have access to your individual accounts. And, if you are married, you can provide that your spouse acts as "Co-Trustee" and also has the freedom to access the trust accounts, just like he or she would access a jointly-held account.

Rebecca Vicente
Hassett & George, P.C.
rvicente@hgesq.com | 860.651.1333 | www.hgesq.com