

# Estate planning – Fact or fiction?

**A**s an estate planning attorney, I have supervised hundreds of signings over the years. At the end of one particular signing, my client put down her pen, sat up straight and with a big smile said, “That was fun!” I never expected to hear those words from an estate planning client, nor do I expect to hear them again. I do, however, always notice relief on the faces of clients after finally executing their estate plan.

Discussing our own mortality is uncomfortable, feels morbid, and is a topic that often does not come up until the issue is staring us back in the face and we can no longer avoid it. Unfortunately, our tendency to post-pone the dialogue results in having difficult conversations when we are overwhelmed, unable to clearly process information, and are inclined to make rash decisions just to get it over with.

When we are stressed and seeking support, we naturally turn to friends, family or online resources for information and advice. Friends and family want to be helpful, but they often do not realize their situation is different from our own which often results in misinformation. Online resources can provide a wealth of information but can be overwhelming, confusing, contradictory and relevant only in certain situations.

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**VIEWPOINT**  
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Management. When asked the most common misconception he comes across when speaking with clients about estate planning, he said clients are often influenced by friends, family, or colleagues regarding what planning path they should be taking. He added, “this problematic because there are NO cookie cutter solutions or answers, as each plan should be entirely different based on family dynamics, wealth, assets, or business interests.”

Is it possible you have been provided with misinformation concerning your own planning? Below are several common statements estate planning attorneys, financial advisors, and CPAs hear from clients. To better inform yourself or test your own knowledge of estate planning, see if you can spot which statements are factual and which ones are fiction.

**Estate planning is not needed until you are older.** Fiction. Upon turning 18, a person is no longer dependent, meaning a health care proxy and power of attorney should be drawn up in the event of the person becoming incapacitated and unable to manage one’s own affairs. Accidents

happen. Unexpected illnesses occur. Being proactive and appointing someone you know and trust to handle your affairs ensures a court will not have to make that decision on your behalf.

**Having a Last Will and Testament “Will” avoids probate.** Fiction. For the directives in a will to be carried out, the will must be probated. The probate process is governed by the rules contained in the New York Surrogate’s Court Procedure Act and the Estates Powers and Trust Law. Various factors influence the length of time it takes to complete the probate process. If an estate is less than \$50,000, all interested parties can be located easily and consent to the will, and there are no creditors of the estate, the probate process can be finalized in six months to a year. However, if minor children are beneficiaries, interested parties cannot be located or live outside of the country, the will is contested, property owned by the estate is located in multiple states and/or real estate is owned by the estate, the probate process can take on average one to two years to complete. If an estate is highly complex or a will is contested, the probate process can take several years to complete. The probate process can be avoided using various strategies such as the creation of a living trust, naming beneficiaries on payable on death accounts, and gifting. But before taking steps to avoid probate, it is important to speak with a knowledgeable professional.

**Everything will pass automatically to my spouse.** This may be true; however, in many cases, it is fiction. Often married couples have individual assets such as bank accounts, vehicles, boats, stocks, and CDs which need to go through probate before being distributed. Additionally, if a couple passes away in an accident or within a short time frame of each other, the failure to plan based upon the assumption the property will automatically go to the surviving spouse creates a massive headache for the individual(s) ultimately responsible for distributing their estates. It also does not take into consideration what will happen to minor children if both spouses pass away.

**Only wealthy individuals need an estate plan.** Fiction. An estate plan is necessary for anyone who wants to protect their interests in the event of their incapacity or death, appoint a guardian for minor children, and take steps to alleviate stress for their loved ones upon their incapacity or death.

**Upon my passing, the executor named in my will can have access to my accounts immediately.** Fiction. A person named as the executor in a will cannot act on behalf of an estate immediately. For an executor to act on behalf of an estate, the court must first appoint the executor and issue Letters Testamentary which can take weeks to months. The length of time depends, in part, on where the will is probated, the size of the estate, and the length of time it takes to locate and notify all interested parties.

**My power of attorney can use my accounts to pay for my funeral and burial expenses.** Fiction. A power of attorney terminates immediately upon death. Therefore, an agent named

in a power of attorney has no authority to act on behalf of a deceased individual and may not use funds in the deceased's account to pay for expenses such as funeral arrangements and attorneys' fees for probate. Additionally, upon notice that a customer is deceased, banks freeze the accounts. This can create an unintended financial hardship for an agent under a power of attorney or an executor as the funeral expenses and attorneys' fees are often paid out of pocket by them.

**I can avoid probate by adding my adult child(ren) to my bank accounts and/or deed.** This is true but doing so can create unintended consequences. Parents often name one of their children as a joint owner of their bank accounts or real property with the expectation the child named will distribute the asset evenly amongst the other children. Naming a child on an account or deed can cause distrust between siblings, trigger capital gains as a result of a loss of a full step up in basis, funds can be misappropriated, and there is no guarantee the asset(s) will be distributed in accordance with your wishes as the child has no legal obligation to follow your instructions.

**I have payable on death beneficiaries named on all my assets, including my life insurance, therefore I do not need to do any additional planning.** Fiction. As a financial advisor, Bob Bleier has found one of the costliest mistakes people make is either naming minor children as beneficiaries or not updating beneficiary designations after circumstances change. Naming a minor child or a testamentary trust as a payable on death beneficiary will result in court intervention. Addi-

tionally, leaving a deceased spouse as a beneficiary can lead to the proceeds being paid to an estate which requires a probate proceeding. In both circumstances, the consequences could have been easily avoided if additional planning was done to prevent unintended consequences.

The examples above are only a sampling of the common misconceptions estate planning attorneys, financial advisors, and CPAs hear on a regular basis. There is a wealth of information available about estate planning but not all of the sources are reliable. Receiving incorrect information can result in unintended financial and emotional consequences for your loved ones.

When thinking about your own unique situation, ask several questions of yourself: Do I have a plan in place that is documented? Is my plan in good order? Have I communicated my plan to my family and trusted advisors? Have my life circumstances changed since I last had a plan drawn up?

Remember, if you have shared with your loved ones your wishes, that is a good first step, but you also have to put your wishes into writing otherwise New York law will dictate who can make decisions on your behalf, who will be responsible for caring for your minor children, and how your estate will be distributed.

It is easy to allow life to get in the way of getting your estate plan done, but proper advisement and crafting an estate plan that best meets your needs, is one of the greatest gifts you can give to your loved ones. Take the time to research and get it right — you and your family are worth it.

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