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FIVE MYTHS ABOUT WILLS

Nearly 60% of Americans don't have any estate plan, including a basic will. If you are one of them, then 2010 is the year you should resolve to take care of this important task. There are all kinds of reasons you may not have done it yet. You may have delayed thinking "I'll get around to it someday." You may think you don't need an estate plan because you don't have much. Some people fear that if they write a will, they'll die sooner. Or you may just find it difficult to think about death.

In reality, there's no evidence to suggest that creating an estate plan will hasten your 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.

Sandra Block, in her October 23 "Managing Your Money" article in USA Today [http://www.usatoday.com/money/perfi/basics/2009-10-22-making-a-will_N.htm] dissects five myths about estate planning and offers 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 "intestate 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 a 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, "And those are two things everybody needs," says Donna Bashaw, an elder-law attorney in Laguna Hills, Calif. 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, says Liza Hanks, an attorney and author of *The Mom's Guide to Wills & Estate Planning*. Do-it-yourself programs, such as Quicken's WillMaker Plus and LegalZoom, are fine for a basic will, she says. While some people fear these programs won't be honored in court, "The law is pretty client-friendly with respect to wills," Hanks says.

"Judges want to honor people's last requests." (However, such do-it-yourself drafting programs won't always know the questions to ask to make sure the will addresses your particular family circumstances.)

For a trust, you should hire an estate planning lawyer, Hanks says. And even if your will is pretty straightforward, you may feel more comfortable hiring a lawyer to guide you through the process, she says. Many people find they prefer a trust to avoid probate or permit management of assets if they become incapacitated.

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

Not necessarily, says Ronald Fatoullah, an estate-planning attorney in New York. State 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 Mississippi, for example, when someone dies intestate, their assets are divided equally among the spouse and the children.)

This can create all kinds of problems, particularly if your spouse was financially dependent on you (and needs all your assets to live) or you have children from a previous marriage (and you want them to receive all your assets without splitting them with your current spouse).

3. If I have a will, my estate won't go through probate.

All wills are subject to probate, says Craig Hersch, a trust and estates attorney in Fort Myers, Fla. 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 brokerage accounts and real estate. When you die, the property is transferred to your beneficiaries (without court action). This transfer occurs outside of probate, which could save your heirs a lot of time and money.

Not everyone needs a trust, Bashaw says. In some states, she says, "Probate is a very easy process, and it isn't necessarily something you need to avoid," she says. (Mississippi is such a state, in which a probate can usually be concluded within six months and for less than \$3,000.) In others, such as California, probate is a slow and expensive process, Hanks says. 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," Fatoullah says. Otherwise, your estate might have to go through probate in several states.

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 courthouse, so people can't gain easy access to them." Hersch says.

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

This is a common misconception and leads to a lot of problems later on, estate planning attorneys say. Once you set up a trust, for example, you need to re-title the assets you want to transfer to the trust, Hersch says. 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, says Matt McClintock, co-chief executive for WealthCounsel, a group of estate-planning attorneys.

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

When you're grieving, the last thing you need is a 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, Hersch says. 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, or the administrator if your parent died without a will. The executor or administrator is responsible for settling the estate, including paying debts. Report any problems with debt collectors to your state attorney general's office, www.naag.org, and the Federal Trade Commission, www.ftc.gov.

Getting your estate plan done will give you and your family a sense of security for their future. For help with your will or trust, call us today at 866-ELDERLAW(353-3752).