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Estate Planning Myths Explained

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Certain ideas with respect to estate planning are widely accepted, yet unfortunately, inaccurate. This article will reveal and explain the most commonly stated estate planning myths.

Myth #1 – “If I have a valid Will, my estate does not have to go through probate.”

Many people believe that having a Will means that their estate will not have to be probated when they pass away. A Will is a document that, in part, gives instructions as to the distribution of the assets in the decedent’s probate estate. The assets in the probate estate are those assets that are held in the decedent’s name alone that do not have a designated beneficiary. Thus, whether or not probate is needed is not based upon whether or not the decedent had a Will; rather, it is based upon how the assets are owned by the decedent. If the decedent left probate assets, then in order for their Will to “speak,” a probate estate must be opened. If all the assets held in the decedent’s name are jointly owned with a right of survivorship or have named beneficiaries, then there is no need for probate.

Myth # 2 – “I can give away \$10,000 to as many people as I want each year, but if I give more, then I have to pay gift tax.”

This myth emanates from the gift tax system. In 2010, the rule with respect to gift tax is that you may give up to \$13,000 to as many people as you want without having to file a gift tax return. Note that the amount that can be gifted is stated incorrectly in the myth as most people remain unaware of the ongoing increases to the allowable gift amount. Also under the current rules, even if a gift tax return must be filed because more than \$13,000 is given to one person, the giver of the gift will not pay any gift tax until they have gifted more than \$1 million during their lifetime. Thus, if a person has \$100,000 and gives all of it away in one year to one person, they will need to file a gift tax return, but they will not owe any gift tax because the gift does not exceed the lifetime threshold.

Myth #3 – “I can give away assets when I enter a nursing home and still obtain Medicaid benefits.”

When faced with a nursing home bill of approximately \$8,000 per month, many people wish to obtain Medicaid benefits to pay for this care. In order

to obtain Medicaid benefits, an asset limit must be met; therefore, assets valued above this amount must be reduced to the asset limit before benefits will be granted. In their efforts to reduce the excess assets, many people believe that they can gift the excess assets due to the gift tax exclusion explained in Myth #2. While a person can make a gift of up to \$13,000 per person in 2010 without filing a gift tax return, the Medicaid program is not governed by the gift tax rules. The Medicaid program imposes a penalty when any assets are given away within 5 years of the application for benefits, except in very specific circumstances. This penalty results in being unable to obtain Medicaid benefits for at least 5 years after such a gift is made. Thus, a gift of any amount will typically result in a penalty being imposed even if the gift does not have to be reported on a gift tax return.

Myth # 4 – “If I need nursing home care, Medicare will pay for my care.”

In some part, this myth is perpetuated due to the fact that “Medicare” sounds very much like “Medicaid,” which does pay benefits for nursing home care for approved applicants. Medicare Part A will pay for medically necessary inpatient

care in a skilled nursing facility, but only following a 3 day hospital stay. Medicare will pay for up to 100 days of skilled nursing care or rehabilitation services. The actual length of benefits could be much shorter than 100 days if those services are no longer required. When Medicare benefits are paid, Medicare pays 100% of the cost for the first 20 days, but only 80% of the cost of the next 80 days. Most Medicare recipients also have

Medigap insurance, which will pay the balance not paid by Medicare. When Medicare benefits are exhausted, an alternative payment source is needed to pay for ongoing nursing home care.

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