

Estate-planning Myths Explained

To Avoid Problems, Separate Facts from Assumptions

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Certain ideas with respect to estate planning are widely accepted, yet unfortunately, inaccurate. This article will reveal and explain some of the most-commonly held 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 or the recipient have to pay gift tax.'

This myth emanates from the gift-tax system. In 2012, 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 in 2012, 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 \$5.12 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

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 2012 (\$14,000 per person in 2013) without filing a gift-tax return, the Medicaid program is not governed



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because the gift does not exceed the lifetime threshold.

In 2013, the amount that can be gifted without having to file a gift-tax return will increase to \$14,000 per recipient, and the lifetime exclusion amount of \$5.12 million will be reduced to \$1 million. It is anticipated that there will be additional changes to the tax code in the near future. As such, if you are considering gifting, you are strongly advised to seek the advice of an estate-planning attorney or accountant knowledgeable in this area prior to proceeding with the gift.

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 \$10,000 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;

by the gift-tax rules. The Medicaid program imposes a penalty when any assets are given away within five years of the application for benefits, except in very specific circumstances. This penalty results in being unable to obtain Medicaid benefits for at least five 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 three-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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