

ESTATE PLANNING AND PROBATE MYTHS

- Myth #1:** A will directs the disposition of all my property at my death.
Reality: The will directs disposition of property which is not owned with right of survivorship or accounts which have a beneficiary or which is not otherwise restricted by Florida law (examples include elective share, homestead, family allowance, exempt property).
- Myth #2:** A will avoids probate.
Reality: A will does not avoid probate, but many financial accounts can avoid probate by beneficiary designation.
- Myth #3:** I need a revocable trust to avoid probate.
Reality: If your estate consists of financial accounts and a home and your beneficiaries are responsible adult relatives, your probate will be minimal (usually a Summary Administration) and you do not need a revocable trust.
- Myth #4:** A revocable trust is always better than a will.
Reality: A revocable trust can backfire because it requires that all debts be paid even if it means selling the home (which is exempt) to pay debts.
- Myth #5:** Probate is long and expensive.
Reality: Ninety percent (90%) of my probate is Summary Administration which costs \$1,600 and last 30 – 60 days. Summary Administration is available for non-probate assets of \$75,000 or less, which excludes the home passing to relatives.
- Myth #6:** I do not need a durable power of attorney because my spouse is on all my accounts.
Reality: A spouse cannot sell or mortgage real property or access assets such as qualified retirement plans, IRAs, 401(k)s, and annuities without your signature.
- Myth #7:** I do not need a living will for life support decisions, because I am married.
Reality: Hospital may appoint a health care proxy but life support can only be removed upon showing of clear and convincing evidence.
- Myth #8:** Estate Planning is very expensive.
Reality: Most clients estate plans consist of a will, durable power of attorney and living will (cost \$325) which last on average 10 years.
- Myth #9:** I will wait until I am very old to set up my estate planning to avoid legal Costs.
Reality: Illnesses such as cancer and stroke can happen quickly impacting your mental and physical ability to do estate planning.
- Myth#10:** I can do my own estate planning without a lawyer.
Reality: You can do your own estate planning as well as be your own auto mechanic, but you may place your spouse's or children's inheritance at risk. As a Board Certified Wills, Trusts & Estates Lawyer, I am constantly learning how to make the estate planning process more efficient for the client and his or her beneficiaries. Failure to account for Florida laws and tax laws can result in disaster for the clients' beneficiaries.
- Myth#11:** I will put my children as joint owners on all my property to avoid probate.
Reality: This will place your property at risk to your children's creditors.