

# Estate Planning Awareness Week: Top 3 Estate Planning Myths

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Estate planning can be a very difficult process. It is estimated that over half of Americans (56 percent) do not have an up-to-date estate plan. Making the decision to begin planning requires us to face the fact that we will not live forever. This thought alone can deter many people from getting started. Others talk themselves out of seeing a qualified attorney to put together an estate plan based on common misconceptions, which may

include the following:

## Myth #1: Only the Rich Need Estate Planning

When we hear about estate planning, it is often a news story about a wealthy businessman or celebrity who made some error, did no planning, or has family members who are angry about the planning that was done. By comparison, when the average person thinks about their own property and planning needs, they may assume that estate planning is not necessary because their monetary wealth does not measure up.

This could not be further from the truth! Estate planning is about more than just money. While proper planning allows you to determine who gets your money and property upon your death, the planning process also addresses what happens if you become incapacitated and someone has to make decisions on your behalf--a far more likely scenario. If you have not done any planning, the court will have to appoint someone to make your medical and financial decisions for you.

Without any planning, state law will decide who gets what—and many times, the government's best guess as to what you would want is contrary to what you actually want.

## Myth #2: I Don't Have to Plan Because My Spouse Will Get Everything

For many married couples, it is common to own property or bank accounts jointly. If these assets are owned jointly, when one spouse dies, the surviving spouse automatically becomes the sole owner. In most cases, this is the desired outcome for married individuals.

While it is convenient for assets to pass automatically to the surviving spouse, this outright distribution offers no protection. What happens if, after your spouse dies, you get into a car accident and are sued? If the assets you owned jointly automatically became yours alone, this money and property are available to satisfy any judgment that could be entered against you resulting from a lawsuit.

What if, after you die, your spouse remarries? If the brokerage account you owned jointly becomes your spouse's only, your spouse is now able to spend it all in any way he or she wants without any consideration for your wishes or the next generation. Your spouse's new spouse may have access to the money you intended to pass to your

children.

Estate planning means the two of you can sit down and plan out what happens to your joint property and accounts upon either of your deaths, ensuring that the survivor is provided for and that any remaining money and property are gifted in a way that is agreeable to both of you.

### **Myth #3: A Will Avoids Probate**

Many people believe that once they have created a Will—whether drafted by an experienced attorney, or using a DIY solution or online form— they have avoided probate. Unfortunately, they are wrong.

While a Will is a great way to designate a person to wind up your affairs once you have passed, determine who will get your hard earned savings and property, and, if necessary, appoint a guardian to care for your minor children, this document has to be submitted to the probate court to begin the process of distributing your money and property. The level of involvement by the probate court can vary depending on the circumstances, but this process is not private, as the Will, and the assets that your Will controls, become a matter of public record. There are various types of proceedings and filings, and an experienced attorney can assist you with the process that is most appropriate and beneficial to you and your family.

The estate planning attorneys at Miller, Miller & Canby are here to help answer any questions you may have about estate planning, the estate planning process, or probate. Together, we can craft a one-of-a-kind plan to ensure that you and your family are properly protected.

**David A. Lucas** is an attorney in the MM&C's Estates & Trusts and Business & Tax practice groups, focusing his practice in Estate Planning, and Trust and Estate Administration. He provides extensive estate and legacy planning, asset protection planning, and retirement planning. To learn more about Miller, Miller & Canby's Estates & Trusts practice [click here](#).