



Will Power

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ESTATE PLANNING FACT OR FICTION

I like to watch ESPN, as my wife will tell you. In fact, as I am typing this I am watching my mighty Florida Gators play college basketball. ESPN has a segment where commentators take a viewpoint and opine (not a word normally heard on ESPN) whether the viewpoint is “fact” or “fiction”. Today I’ll take some viewpoints that I have heard about estate planning:

If I have a good Will, probate will not be required, and my assets can be transferred immediately to the beneficiaries of the Will. FICTION. All Wills are subject to the probate process. Probate is a court proceeding to transfer title from the decedent’s name to the living beneficiaries. Probate occurs in the state of your legal residence as well as any state where you own real property. The length of time to complete a Probate varies from state to state, but can take six to eighteen months, on average. Probate is frustrating to the heirs and is public record.

Revocable Trusts avoid the probate process. FACT. To the extent that your assets that would otherwise be subject to your Will are transferred to your revocable trust before your death results in those assets avoiding the probate process.

I don’t need a Will if I have a small estate. FICTION. Many people also believe that if there is no Will, all the decedent’s assets will be distributed to the surviving spouse. If you don’t create a valid Will, most states, including Florida, have statutes that will dictate where your assets go and who will administer your estate. State law may not distribute your assets to the people you want to have them.

If my assets do not exceed \$2,000,000.00, I will avoid probate. FICTION. In Florida, if you have over \$75,000 or real estate, your estate will probably require probate, unless you use a Living Trust or some other probate-avoidance technique.

A Will covers all my assets. FICTION. Wills do not cover assets held as joint tenants with right of survivorship, retirement plans, annuities, life insurance, financial accounts with payable on death or transfer on death designations.

I can do my own estate plan. FACT, but your heirs should expect to pay a lot in attorneys and accountants fees cleaning up messes. Estate planning is more than just creating documents. It is understanding the big picture and how the legal documents will work in concert with the assets at the time they are needed.

Only the wealthy need to worry about taxes. FICTION. Many states have inheritance taxes (Florida does not) and income tax planning with retirement vehicles is becoming an increasingly important task in estate planning.

I don’t need an estate plan because I hold all my assets jointly with another. FICTION. In fact, placing all assets in joint name might be the worst way to plan your estate. Joint assets or accounts could expose you to gift taxes on the transfer if ever audited by the IRS; many joint accounts do not avoid probate; jointly held accounts do not receive a full step up in tax cost basis at the death of the original account holder, resulting in capital gains taxes that would not have otherwise occurred; jointly held accounts are subject to the claims of creditors of your new co-owners, including divorce, bankruptcy and automobile accident claims; and will circumvent your intent as expressed in your Will.

Don’t let common misunderstandings affect your planning. I hope this little column assisted you in cleaning up myths that surround this field. Now if you will excuse me, I have a game to watch...

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