

COMMON MISCONCEPTIONS AND EXCUSES USED TO DELAY ESTATE PLANNING DECISIONS



By: Robert J. Travers, Esq.

Everyone I talk with seems to lead a busy life – longer hours at work, children on sports teams competing around the state, household improvement projects and general upkeep – and the list goes on and on. In order to budget our precious time, we attempt to prioritize our projects. Dealing with the more complex projects, we tend to “trick” ourselves by finding excuses to delay the start of them. Such is the case with estate planning. I talk with so many couples who confess, “We’ve been meaning to address/update our estate plan, but we put it off because ... Below are some common misconceptions and excuses used by couples to justify putting off planning for the security of their families.

Misconception #1: “If I die without a Will, everything will pass to my spouse anyway.”

Reality: Under the laws of Massachusetts, property titled in your individual name at the time of your death (your “probate estate”) will pass one-half to a surviving spouse and one-half to your surviving children. This comes as a shock to an uninformed widow or widower at a time when he/she doesn’t need more bad news, and usually results in unnecessary expenses and complexity during settlement of the estate. By having a valid will in place at the time of your death, you, and not the laws of the state, determine who receives your property. (Please note that assets held in jointly with right of survivorship or assets naming a designated beneficiary are not part of your “probate estate”.)

Misconception #2: “I will never pay any estate tax – my estate is too small.”

Reality: Many clients are *unpleasantly* surprised when learning that their estates would owe Massachusetts and/or federal estate tax if something happened to them tomorrow. A person’s “gross estate” that is subject to tax includes all assets that the person owns, or has an interest in, at time of death – the value of the residence, retirement accounts, any second homes or investment properties, annuities, death proceeds of life insurance, etc. Death proceeds payable from a life insurance policy is the asset that causes the estate value to soar. For instance, if a person has a \$1 million term life insurance policy, either through work or a separate policy, such person is well on their way to having an estate that is taxable under state and/or federal law. Under present law, Massachusetts taxes estates having a value exceeding one million dollars, unless such assets are passing to a spouse who is a U.S. citizen (which amount is unlimited). The federal law allows you to shelter up to two million dollars with the same unlimited deduction to a surviving spouse. However, with the right type of planning, a couple can use each of their exemption amounts in order to shelter a maximum of two million dollars under Massachusetts law and four million dollars under federal law. By using a simple planning strategy involving revocable trusts, a person can maximize the amount that can be sheltered from estate tax

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while providing for the surviving spouse and children. A tax efficient estate plan will then ensure that your assets pass to your family rather than to the government.

Misconception #3: “Everyone knows that I want _____ (fill in the blank with your brother, sister, parent, friend) to care for my minor children if something happens to me.”

Reality: One of the most difficult decisions during the estate planning process is the selection of a person to act as guardian for your minor children if something happens to you prematurely. No one can take your place as a parent. However, by failing to nominate someone to fill this role, your decision of who best to care for your children will never be known. Even worse, both your side and your spouse’s side of the family may wage battle in court to be appointed as guardian. Your children, already dealing with the loss of a parent, could be subject to conflicts among family members at a time when continuity and compassion are necessary for their well-being. Unfortunately, the lure to control substantial sums of money for the benefit of the minors may induce ill-intentioned parties to enter the guardian competition. Why not avoid such a potential nightmare by nominating someone you trust to serve as guardian, along with a back-up candidate, under your Will? It may make a terrible situation a bit more manageable for your kids.

Misconception #4: “We don’t need a trust – we’re not the Rockefellers.”

Reality: Trusts are no longer just for the ultra-wealthy. Revocable trusts can address a number of issues that plague the uninformed. First, the assets that you transfer to your trust during your lifetime avoid the delay, expense and public disclosure of “probate” – the court-governed, public process for the distribution of your estate upon your death. Second, couples can use the flexibility within a trust instrument to minimize the amount of their estate tax liability and still have the estate available for the use and benefit of the surviving spouse (See Misconception #2, above). Third, a trust can appoint a person or entity (trust department) to oversee the investment and distribution of trust assets. This is especially important if young children are beneficiaries. You can design the trust so that the principal is held for the benefit of the child until he/she reaches certain ages, such as distribution in thirds at ages 25, 30 and 35. Without such planning, a child may have control of substantial sums of money at too young an age – such as 18 or 21. Just think back when you were 18 – buying shots for the entire bar might have seemed rational. Children always need guidance from their parents, at any age, and you can continue to provide such advice through the provisions of your trust. Finally, the trust is protection for your heirs against judgment creditors and divorcing spouses. You can give your trustee the discretion to make distributions as the trustee deems appropriate, even to the extent of making no distributions to a child-beneficiary who has creditor problems, in the middle of a bad divorce, or has strayed down the wrong path (substance abuse problems).

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