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Debunking Common Misconceptions About Wills

The majority of Americans do not have a will, and the number of US households with a will has been in steady decline.[1]

At the outset, it is important to dispel a recurring myth about estate planning: It is not just for the wealthy—or older adults, married couples, or any other single category of individual. Estate planning is beneficial for everyone. But this is just one of the many misconceptions people have about wills and estate plans; there are also misunderstandings about how wills function and what planning purposes they can be used for.

Myth #1: Wills can be used to avoid probate.

If you are like most Americans, you probably value your personal autonomy and want to minimize state involvement in your personal affairs—both in life and in death.

When someone dies without a will (known as dying intestate), the courts and state law determine who receives the deceased person's home, retirement savings, personal property, and other assets. This is done through a process called probate.

Even if you pass away with a will, your estate must go through probate, although the process will not be nearly as heavy-handed as it would be for somebody who dies intestate. Your will lays out your wishes about what happens to your money and property instead of relying on your state's law.

Probate is not necessarily bad in every jurisdiction. It costs money and can delay distributions to your loved ones. Still, it also helps to ensure that your estate is administered accurately and legally with the added oversight of the court.

That said, there are benefits to avoiding probate, and estate planning attorneys can recommend tools for doing so, such as trusts and beneficiary designations on financial accounts.

Myth #2: You cannot use a will for tax planning.

The certainty of death and taxes, as famously noted by Benjamin Franklin, is not quite as certain as the taxes you might owe at the time of your death.

Estate taxes, sometimes called death taxes, are applied to assets (your money and property) that you leave to others when you pass on, but the threshold net worth value when these taxes kick in is very high. In 2024, you will not owe federal estate and lifetime gift taxes until your taxable estate is over $13.61 million, and that exemption amount doubles for married couples.

Separate from, and in addition to, the estate tax is the generation-skipping transfer (GST) tax, which applies to asset transfers to recipients—typically grandchildren—who are two or more generations younger than you. In 2024, the GST tax exemption is also $13.61 million, or $28.22 million per couple.

However, the federal estate, gift, and GST tax exemption amount is set to decrease sharply at the start of 2026 and revert to pre-2017 levels that are around half of what they are now. This anticipated decrease in the exemption amount might justify employing advanced estate planning strategies now, ahead of the 2026 sunset.

Before the current era of super-high exemptions, trusts were frequently used in estate planning to reduce or eliminate estate, gift, and GST taxes. These strategies are still generally available today, but wills can also be used for tax planning purposes.

Trusts can be created by an individual during their lifetime, in a revocable living trust, or upon their death, under the terms of their will. The latter—known as testamentary trusts—can be structured in various ways that may be utilized for estate and GST tax planning, particularly by married couples. Some examples of tax-planning will-based trust structures are as follows:

- A **qualified terminable interest property (QTIP) trust** is a type of trust established for the benefit of the surviving spouse. Assets transferred into a QTIP trust qualify for the unlimited marital deduction, mitigating estate taxes due upon the first spouse's death. However, this may only defer estate taxes owed until the second spouse passes away.
- A decedent can leave their entire estate (or a large part) to their spouse. The surviving spouse can then disclaim, or say "no, thank you" to some or all of their inheritance from their spouse. This disclaimed portion goes into a **bypass trust** (which can go by many different names, such as credit shelter trust or family trust), which can benefit the surviving spouse (and can also benefit others, such as dependents) during their lifetime but will not be included in the surviving spouse's estate at death. This trust may be created to use the willmaker's lifetime exclusion amount at their death instead of the unlimited marital deduction.
- A trust can be established at your death that skips over your living children and directly benefits your grandchildren to avoid a double estate tax (once when passing to the next generation and again when passing to the generation after them). But because the GST tax exemption is separate from the lifetime estate and gift tax exemption, you can engage in advanced will-based planning to reduce or potentially eliminate the GST tax, allowing more money to flow to younger generations.

Including tax-saving trusts in the provisions of a will can be quite complicated in practice, but will-based estate plans have a place in tax planning for every demographic.

Myth #3: Creating a will is cheaper than creating a trust.

Creating a basic will might be cheaper than creating a basic trust, but it is not an apples-to-apples comparison.

It ultimately comes down to how complex your plan is. Trusts tend to be more complex than wills and, therefore, are typically more expensive to prepare. However, trusts and wills can often contain similar provisions that require a comparable amount of time to properly research and draft properly.

In addition to upfront costs, administration costs need to be factored in. Wills are subject to probate and can, therefore, be more expensive to administer. However, trusts may have ongoing costs such as managing investments, filing taxes, and accounting that simple wills likely do not have.

Rather than focusing on a set price, you should orient a plan around your specific circumstances and needs. Estate planning is not an area where it pays to cut corners, whether by using online planning tools or trying to make an overly simplistic plan when a more detailed plan is required.

You also need to consider the costs of not having an estate plan—or having a plan that falls short of your planning goals. To discuss those goals and how we can help you meet them, please reach out and schedule a consultation.

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1) Rachel Lustbader, 2024 Wills and Estate Planning Study, Caring.com, https://www.caring.com/caregivers/estateplanning/wills-survey/ (last visited Jul. 31, 2024).