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Three Common Misconceptions about Estate Planning

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Estate planning is (probably unexpectantly) quite enjoyable for lawyers to assist with. Sitting down with individuals or couples to discuss what they would like to see happen when they pass away is something that lawyers at our firm find meaningful because it gives us the opportunity to help people find clarity in a moment that will be, no doubt, difficult for their loved ones.

After the estate planning process is completed, we often hear clients say that the process was far easier than they expected it to be and that they feel a sense of relief knowing that there is a plan in place. Over the years, I have heard many things from clients and these include three of the most common misconceptions about estate planning:

1) I should not meet with a lawyer until I know what I want in my Will & Power of Attorney (POA).

Early in my career, clients would ask me what they could do to prepare prior to our first estate planning meeting. I would then send an e-mail of the top items that we would be discussing at the meeting and in most cases, I would not hear from the clients again for years. I realized that coming up with solutions for problems without knowing what some of the options might be is an extremely difficult task. Since then, I have changed my approach and told clients to simply show up at the first appointment.

During the first meeting, lawyers will ask you a slew of questions about yourself – your background, details of your family tree, your assets, etc. Then based on knowledge of your own situation, we will talk about who you wish to be your beneficiaries, who will be the ideal executor and other provisions that are necessary in your case. On occasion, I would send clients home with a couple of items that they need to think about or discuss further between the two of them, but I always give them some ideas of what the answers could be and some tools to understand the options available to them.

2. If I don't have a Will, my spouse or children will just receive my assets without issue.

The answer to this item is “maybe”. There are so many variables as to whether things will go smoothly or not for your family members after you pass away. If you have any assets in your name at the time of passing, and do not have a Will, then your next of kin will have to apply to the court in order to administer your estate. In some circumstances, having a Will can avoid the court application process altogether.

Additionally, how your estate is divided is certainly more complicated today than it may have been generations ago. The legislation clearly sets out circumstances where the spouse or children are to receive. It may come as a surprise to an individual that is part of a blended family as to the distribution that will occur if you do not have a Will. Your spouse and children may receive from your estate, but it may not be in the amounts that you would deem to be appropriate.

3. I do not need a POA. By default, my spouse or children will be able to manage my affairs.

Most people that I speak to are surprised to learn that in the event that they become incapacitated, their next of kin – be it their spouse or children – are not legally entitled to act on their behalf when it comes to legal and financial decision-making.

For the next of kin to have the ability to make decisions on your behalf, they would have to make a court application for Committeeship which may include the requirement for regular reporting to the court every few years. The cost of such application over an individual’s lifetime could cost tens of thousands of dollars.

Alternatively, if no one makes a court application to act on your behalf, then the Public Guardian and Trustees Office will step in and manage your affairs. In most cases, clients prefer to decide on who would act for them if they were unable to manage their legal and financial matters and decisions. A POA is also helpful and useful if one party is going to be out of the country or unavailable to sign documents for one reason or another.

We often think about POA as a legal document that would be executed as a person ages or becomes physically/mentally incapacitated. However, young people should also consider having a POA because it provides peace of mind, knowing that their affairs will be taken care of by a trusted individual in case of unforeseen circumstances.

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