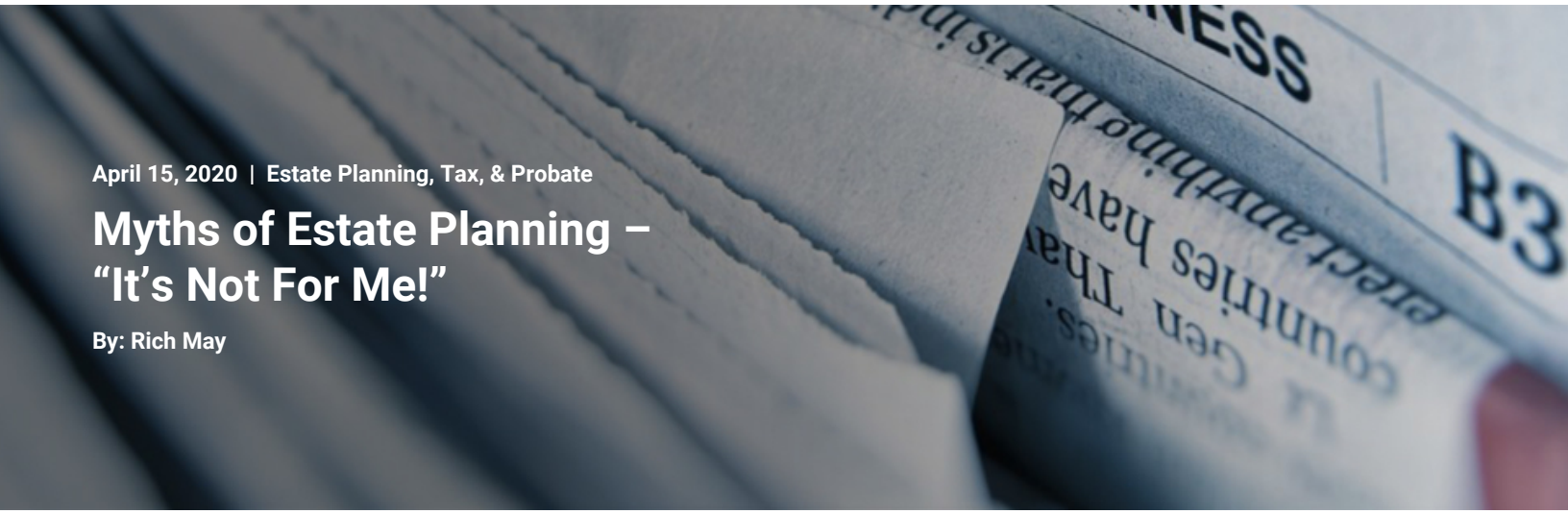

April 15, 2020 | Estate Planning, Tax, & Probate

Myths of Estate Planning – "It's Not For Me!"

By: Rich May

1. *I did an estate plan years ago – I'm all set!*
    - FALSE! Older estate plans may not authorize release of medical records, consider electronic accounts and access, or maximize tax benefits. MA estate tax and HIPAA requirements have also changed, as have portability provisions. Proxies or beneficiaries may have passed away or reached adulthood, and their designations should be reviewed and updated.
2. *If I don't have a Health Care Proxy, my spouse will automatically be able to make decisions for me.*
    - FALSE! Without a written Health Care Proxy, each hospital has their own procedure for determining who gets to make your medical decisions for you in the event you are incapacitated. These processes vary, but can be cumbersome to your family. If there is a disagreement among your family members or significant others as to who should make your medical decisions, or what your wishes would be, the legal process to determine how to proceed will be time-consuming and costly for them. With a Health Care Proxy in place, you also ensure that doctors can disclose your medical records to your chosen proxy, which is particularly important not only to their decision-making but also under HIPAA laws.
3. *No one is going to contest my spouse making decisions for me, and they know what I want. It'll be fine.*
    - FALSE! You can't possibly anticipate every situation. Articulating your wishes in writing and naming a specific person as your proxy will take the stress off of them in guessing what you would want in a given



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situation, and remove the uncertainties they will face during that stressful time. It will also remove the additional hurdle of proving themselves to be your decision maker at the hospital and allow the facility to move quickly to implement your wishes.

4. *I don't need a Power of Attorney document in place because my spouse, parent or adult child will be able to handle all my financial accounts if needed.*
   - FALSE! Without a Power of Attorney, if accounts are solely in your name, your spouse, parent or adult child will not be able to access them and would have to go through a lengthy and costly legal process to do so. A Durable Power of Attorney will allow your chosen POA to step into your shoes to access your accounts or safe deposit boxes while you are alive and incapacitated.
5. *I don't need a will, if I pass away, all my assets will automatically go to my spouse.*
   - FALSE! In MA, if you are married and die without a will in place, your assets will go partially to your spouse, but may also go partially to your parents, siblings, children, step-children, etc. If you are unmarried and die without a will, your assets will first go to your children, then your parents, your siblings, their children, etc. You might prefer to leave certain assets to a non-marital partner, or other individuals, or a charity. All of these processes take much longer for the court system to distribute in the event you do not have a will, and will cost your estate more in legal fees and leave less to be distributed in the end to those you care about.
6. *My spouse and I have minor children. Do we need wills and revocable trusts?*
   - YES! You absolutely need wills to determine guardianship of your minor children in the event you pass away simultaneously. Making your wishes known through a will removes the uncertainty your loved ones will have to face in the event of your deaths, and the legal proceedings they will have to go through to obtain guardianship in the absence of your wills. If both parents pass away, you want to have revocable trusts in place so that your children have a trustee appointed to manage their inherited assets.
7. *I'm okay with all of the asset distribution that will happen under the MA laws of intestacy (dying without a will). So I don't need a will, right?*
   - FALSE! Not having a will in place will make the distribution of your assets easier to challenge than if you had a written will as all parties

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will be guessing at your wishes as far as the court is concerned. Intestate proceedings take longer and depending on the circumstances, the court may require procedures like a costly genealogical search for potential heirs before closing out your estate. If you have a will in place it can simply be filed with the probate court and your chosen personal representative can proceed with distributing your assets according to your wishes, allowing your assets to be distributed more quickly and with fewer obstacles.

8. *Estate plans are so expensive! I can't afford to do this right now.*
   - FALSE! In most circumstances, an estate planning package including a Last Will and Testament, Health Care Proxy, Living Will, Revocable Trust and Durable Power of Attorney are very affordable. Contact us for a free estimate.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Sarah Wegman.

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