

SPECIAL REPORT

10 MYTHS OF TEXAS

ESTATE

PLANNING

Discover How Your Misconceptions
Might Be Costing You Money



MATT ZIMMERMAN

SYDNEY KEY



**Many are
overwhelmed with
concerns about the
future**

If you have been thinking about creating an Estate Plan it is likely you are receiving misinformation from well-meaning family, friends, and online Google searches.

We are here to help you get clear information about options available in Texas.

Let's take a look at 10 common myths about creating an estate plan.



willsandprobatetx.com

MYTH #1: Estate Planning is only for the wealthy

The words “estate planning” often conjure up visions of jet-setters, movie and internet stars along with trust fund babies.

Because of this common association with wealth, many people are led to believe that estate planning is not for them or that they somehow “do not qualify.”

Too many people have been led to believe this myth...

Whether you feel wealthy or not, the fact is you do have an estate. Every estate can benefit from various forms of protection available under the law here in Texas.

It's important to have a basic estate plan in place regardless of your net worth.



Estate planning can entail several specific components and provides a number of important protections for you and your family.

Estate Planning includes several important legal instruments:

- A Will
- A Power of Attorney
- A Living Will or Advanced Medical Directive
- A Trust
- A Declaration of Guardian for Minor Children

Incorporating some or all of the instruments listed above into your estate plan can provide very important benefits:

- Ensuring your assets are inherited by the people you want to inherit them.
- Handling of your financial affairs by someone you trust rather than someone appointed the court.
- Custody of your children determined by you, in advance, rather than by the court.
- Distributing wealth to your children (and grandchildren) without paying estate taxes.
- Ensuring your intentions are carried out with regards to your health care if you become incapacitated.
- And more.

Myth #2: I don't need a will

We find that the majority of clients who come through our doors lack even the most basic parts of an estate plan, including a will.

Everyone, regardless of their net worth, needs a will.

A will is a vital and important part of your estate plan.

A will directs how your assets should be distributed upon your death.

Wills also determine who will manage your estate as the Executor.

If you die “intestate” (without a will), here is what will happen:

- Your estate will go into probate.
- **The Court will** decide who should manage your estate.
- **The Law will** determine who receives all your assets.
- **The Court will** divide your assets among your surviving spouse and children in the way the law dictates. If you're single, they will divide it among your blood relatives...whether you like them or not.

If you feel confident that a **judge and the Texas Legislature** are the best people to make these decisions for you, then you do not need a will.

On the other hand, if **YOU** want to designate who inherits your estate and be sure that your affairs are managed by a person you trust, a will is essential to your estate plan.



Myth #3: If I die without a will, my Spouse will get everything

That is what most people assume will happen.

After all, their spouse's name is probably on everything anyway.

However, Texas law can cause some weird things to happen when you die without a will.

Any separate property that you own (e.g., property that you owned before your marriage or property that you inherited) will be split between your spouse and your children. Your spouse will get $\frac{1}{3}$ of any personal property and your children will split the remaining $\frac{2}{3}$ amongst themselves.

If you leave separate real estate, your spouse will receive a $\frac{1}{3}$ interest only for the rest of their life, and the remainder will be divided among your children.

Your community property, the property that belongs to both you and your spouse, will be split between your spouse and any children who do not also belong to your spouse. That means that your spouse could be stuck sharing your house with their stepchildren. As you can imagine, this strange ownership distribution can cause many problems for your spouse.

Your best option is to execute an estate plan which specifies who gets your property.

Myth #4: Everyone should have a trust

While trusts can be effective tools in an estate plan, not everyone needs one. In fact, trusts can cause a lot of problems in some cases.

First of all:

Trusts can be expensive to create and maintain, as they require constant maintenance to make sure that they remain effective.

Secondly:

If an asset is not correctly put into the trust, or if the trust terms later become insufficient for the situation at hand, your beneficiaries will probably end up in court anyways.

If that's the case, why would anyone have a trust?

Trusts can be great tools when they are used in the correct context.



Here are some reasons that you might need to consider using a trust:

1. You have a very large estate which may be subject to Texas estate taxes.

The current (January 2025) Texas estate tax exemption is \$13.9 million per person.

If your estate is near that amount, a trust can be used to minimize your estate taxes.

2. You have a blended family.

A trust can be very useful when you want to provide financial support for your spouse after your death but also want to make sure children from a prior marriage don't get cut out completely.

3. You want to leave your estate to a minor or person with a disability.

A testamentary trust can be used to make sure that your family members who may have difficulty managing money themselves are financially taken care of.

Myth #5: I'm too young for estate planning

This is one of the **BIGGEST** myth's that Estate Planning is only necessary for older people.

The reality is that unexpected events can happen at any age.

Having an estate plan ensures that your wishes are known and respected, regardless of your age, whether you are married or not, or if you have, or do not have children.

It also helps manage your affairs should you become incapacitated and makes the probate process much more straightforward for your family.



Myth #6: It's best to let my heirs decide

Occasionally, people who prefer not to talk about death with their loved ones feel quite comfortable believing this myth.

Books have been written on the family wars that ensue when the deceased fails to leave clear instructions about how to distribute their money and property. Unless you intend to create a family feud, it is in everyone's best interest for you to make your intentions clear by leaving a will and/or trust.

Money and property are not the only things your heirs will be making decisions about if you fail to make your wishes known.

In addition to distributing your assets, here are some other decisions your family may be making for you, under the direction of the court, whether you like it or not:

- The person who will manage your affairs if you become incapacitated.
- Whether you will be resuscitated or not.
- Who your health care agent or guardian will be if you become incapacitated.
- The guardian who will care for your minor children.
- Who will take over the family business, if you have one.

Myth #7: Estate taxes will eat up my entire inheritance



The 2025 Texas estate tax exemption is \$13.9 million per person.

Any amount of your estate greater than that which passes through probate will be subject to a 40% estate tax. However, as long as your estate is worth less than the exemption, you will not be subject to the estate tax.

This means that the average person does not need to be concerned with estate tax planning.

Though you should keep in mind that estate tax laws are constantly changing.

Therefore, the larger your estate becomes, the more important it is to seek the counsel of a trusted and competent estate planning attorney if you wish to protect your assets against estate taxes.

Myth #8: No one will contest my estate

Even when you make your wishes known via a will or trust, you still run the risk that one of your heirs will dispute your instructions or argue about the meaning of your will or trust language.

When someone dies, the distribution of his or her assets has the potential to cause conflicts among family members.

Even when a will or a trust appears to leave no question as to the decedent's intent, these disputes can be very emotional and lead to litigation, which is time consuming and expensive.

Some estate disputes can drag on for years and cause lasting rifts in families. Most people say: "My family would never argue over my things after I'm dead." But the truth is, this happens more often than you think, and usually from someone who you would never expect to cause problems.

If you are involved in estate litigation, or if you anticipate that you will be involved in an estate dispute, a knowledgeable, tenacious estate litigation attorney can be invaluable.

We represent heirs, beneficiaries, trustees and other parties in the full range of estate litigation.



The breach of fiduciary duties is often the root of trust litigation.

Trustees must adhere to a number of fiduciary duties, including the duty of loyalty, the duty to protect trust assets, and duties to report on the trust regularly.

When trustees are suspected of self-dealing, improper management of trust assets, fraud or other breaches of duty, litigation is likely to follow.

Contested wills typically revolve around a number of issues, such as technical defects, ambiguities, or allegations that the will is the product of coercion or undue influence.

Whatever the specifics, our law firm will undertake a complete investigation of the matter and work towards a favorable resolution.

Myth #9: Estate Planning is Expensive

This common myth prevents too many people from taking protective measures their family deserves.

The truth is, Estate Planning is modestly priced, especially in comparison to the amount you risk paying in attorneys fees if your assets must undergo intestate probate.

Don't postpone the peace of mind you will achieve by getting your estate in order.



Myth #10: I should handle my estate planning myself

We see many do-it-yourselfers who start out with the belief that they should handle their estate planning needs themselves. However, it takes only one misstep to make them wish they hadn't.

Do-it-yourself solutions often do not meet all of the legal requirements of a valid estate plan.

Additionally, even if they do provide legally compliant paperwork, they provide a solution in a vacuum. They don't provide any qualified assessment of your needs in the context of your financial or tax situation. But don't take our word for it.

Here are a few excerpts from a popular do-it-yourself legal site's disclaimer statement:¹

“[This] legal document service is not a substitute for the advice of an attorney.”

“[We are] prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies.”

“...the legal advice on this site is not guaranteed to be correct, complete or up-to-date.”

“Therefore, if you need legal advice for your specific problem, or if your specific problem is too complex to be addressed by our tools, you should consult a licensed attorney in your area.”



We represent everyday people every day. We're familiar with the rules, procedures, and rights that come into play in estate planning matters here in Texas.

When you represent yourself, you risk creating an insufficient or inappropriate estate plan that fails to accurately account for your current situation and Texas legal requirements

Most importantly, an experienced estate planning attorney will be able to properly advise you when it comes time to make decisions that will affect the ultimate outcome of your estate.

Final Thoughts

Thank you for taking the time to read this special report on Estate Planning.

Our goal was to provide you with valuable insights to help you make more informed decisions.

While we aimed to cover essential topics, estate planning can be complex and unique to each individual's circumstances.

To get the most accurate and personalized information, we encourage you to schedule an appointment with our office

This initial consultation is an opportunity for us to discuss your specific situation to determine the best steps forward together.

Don't let uncertainty and stress overwhelm you.

Call our office today to take the first step towards a secure future.

You'll be glad you did.



willsandprobatetx.com 325-313-5373

References

1. *Legalzoom disclaimer*. (n.d.). <https://www.keytlaw.com/Cases/legalzoom-disclaimer-110724.pdf>

(Individuals other than our attorneys depicted therein are not actual clients but are models or actors)