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Common Myths and Misconceptions About Estate Planning

By Abbe I. Herbst

ANDERSON KILL & OLICK, P.C.
1251 Avenue of the Americas
New York, NY 10020-1182
(212) 278-1000
Fax: (212) 278-1733

ANDERSON KILL & OLICK, P.C.
1600 Market Street
Philadelphia, PA 19103
(215) 568-4202
Fax: (215) 568-4573

ANDERSON KILL & OLICK, P.C.
One Gateway Center
Suite 901
Newark, NJ 07102
(973) 642-5858
Fax: (973) 621-6361

ANDERSON KILL & OLICK, L.L.P.
2100 M Street, N.W.
Suite 650
Washington, DC 20037
(202) 218-0040
Fax: (202) 218-0055

ANDERSON KILL & OLICK
190 South Lasalle Street
Suite 800
Chicago, IL 60603
(312) 857-2500
Fax: (312) 857-0122

ANDERSON KILL & OLICK, P.C.
Two Sound View Drive
Suite 100
Greenwich, CT 06830
(203) 622-7668
Fax: (203) 622-0321

www.andersonkill.com

1. I Have a Spouse and Two Children, So Even Without a Will the Law Provides for Everything to Pass to My Spouse.

Not true. The law of the state in which you are domiciled at the time of your death provides for the disposition of your estate in the event that you die intestate (without a will). In New York, if you are survived by a spouse and children, the spouse receives only the first $50,000 and one-half of the balance, and the children receive the other half. Moreover, if any of the children is a minor, a guardian may have to be appointed by the Surrogate's Court to receive the minor's share, and the minor will be entitled to his or her share upon reaching 18 years of age. A will can provide that if you leave any share passing to a child the share shall be held in trust until the minor attains the age set forth in your will.

In New York, if you are survived by a spouse, but no children (or descendants of pre-deceased children), the spouse receives the entire estate, whether or not one of your parents is still alive. In New Jersey under those circumstances, however, your spouse receives $50,000 plus one-half of the balance, and the other half is shared by your parent(s).

2. My Former Spouse and I Executed Wills When We Were Married, But Now That We Have Divorced, the Law Revokes All Benefits for Him/Her, So I Don't Have to Do Anything Further.

While it is true that, generally speaking, divorce or annulment revokes all dispositions of property made by the will to the former spouse, and all provisions naming him or her as executor or trustee (and in New Jersey, as guardian, too), the beneficiary designations contained in life insurance policies, individual retirement accounts and 401(k) plans are unaffected by divorce or annulment. Therefore, following divorce or annulment, it is important to review all beneficiary designations and make changes so that the benefits will be paid to those whom you intend to benefit.

On the flip side, if you are getting married and have entered into the typical pre-marital agreement, in which each of the parties waives any rights he or she may have to share in the assets or the estate of the other, and you wish to designate someone *other than* your future spouse as the beneficiary of your pension plan, make sure that, after you are married, your spouse executes the required spousal waiver. Federal law requires that the waiver be executed by an actual spouse—and cases have held that a waiver of rights contained in a pre-marital agreement by a fiancé does not satisfy the statute.

3. My Only Assets Are My Home and A Few Investments. Therefore, I Don't Have a Significant Estate and I Don't Need Estate Planning.

You are probably worth more than you realize. Probate assets, i.e., the assets

who's who

Abbe I. Herbst is a shareholder in the New York office of Anderson Kill & Olick, P.C., and Editor of AKO's Estate Planning & Tax Advisor. Ms. Herbst is admitted to practice in New York and New Jersey, and has broad experience in the areas of estate and tax planning and trust and estate administration. She is a member of numerous Bar Associations and the Financial Women's Association of New York.

Helpful Tip: *Many people believe that, in addition to gifts of up to $11,000 each year to any number of individuals, birthday and holiday presents don't count towards that $11,000 maximum. This is another misconception. Although the IRS would probably ignore modest birthday and holiday presents of a few hundred dollars, you have to be very careful.*

An excellent way to make gifts in excess of the $11,000 per donee annual gift tax exclusion is to take advantage of the provisions of the Internal Revenue Code that allow the payment of educational and medical expenses directly to the provider in addition to the annual exclusion gifts. We have many clients who not only make the annual exclusion gifts to their children (and grandchildren as well), but pay the tuition for the grandchildren, too.

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that pass under your will, are the assets in your own name that do not pass to someone else by operation of law or by beneficiary designation upon your death. Probate assets would be those registered simply in your own name.

Non-probate assets, which do not pass under your will, include joint or "in trust for" bank accounts, life insurance proceeds payable to a designated beneficiary and individual retirement accounts, 401(k) plans and other retirement benefits payable to others upon your death. *All* these assets, both probate and non-probate, can be ensnared by the estate tax.

4. The First $1,500,000 is Exempt From Estate Tax and So, Although My Estate is Greater than $1,500,000, I'm Not Facing Much Estate Tax Exposure.

This is probably one of the biggest misconceptions, and one of those we hear most often.

The federal estate tax is structured so that the tax is imposed on the first dollar of the taxable estate, but a credit against tax is allowed which effectively exempts the first $1,500,000 from the tax. Although the marginal tax rates have decreased in recent years, and are scheduled to decrease further in the years ahead, they are still quite high.

Assume a taxable estate (i.e., after deductions for the unlimited marital deduction, your debts and the administration expenses of your estate) of $2,000,000. Remember, your taxable estate includes not only assets in your own name, such as a home, securities, other investments and bank accounts, but it may also include the proceeds of life insurance on your life and retirement plan benefits. The federal estate tax would be $200,100, computed as follows:

Tentative tax on $2,000,000:	$780,800
Unified credit (equal to the tax on $1,500,000)	(555,800)
Subtotal	225,000
Credit for state death taxes	(24,900)
Federal estate tax	$200,100

That's just the federal estate tax! New York, New Jersey and the other states in the metropolitan area impose their own estate taxes as well. In New York and New Jersey, the estate tax on the hypothetical $2,000,000 taxable estate would be $99,600, for total federal and state estate taxes of $299,700.

The common denominator of these four common misconceptions is that they all result from a lack of proper advice. ■

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the Firm only upon engagement with respect to specific factual situations.

Phillip J. Benoit, CPA	(212) 278-1348	pbenoit@andersonkill.com
James G. Clements	(212) 278-1244	jclements@andersonkill.com
Phillip England	(212) 278-1483	pengland@andersonkill.com
Matthew E. Franks	(212) 278-1143	mfranks@andersonkill.com
Abbe I. Herbst, *Editor*	(212) 278-1781	aherbst@andersonkill.com
John J. Hess	(212) 278-1811	jhess@andersonkill.com
Mary E. McGuire, EA	(212) 278-1801	mmcguire@andersonkill.com
C. William Tanzi	(212) 278-1384	wtanzi@andersonkill.com