

MYTHS & TRUTHS IN ESTATE/ELDER PLANNING

Tracy Christen Reimann, Esq.
reimannlaw@optonline.net
(914) 617-8447

“I cannot leave anything to my disabled child in my Will.”

By creating a Supplemental Needs Trust in a Will or a Trust during life can provide for your assets to be able to be available for your child’s care while not having them lose their governmental benefits.

* * * * *

“I must divorce my spouse because he is in a nursing home and we cannot afford his care.”

This is not true. There are planning options available where one spouse can remain in the community, have the other spouse receive care in a nursing home and still maintain the family assets.

* * * * *

“If I die without a Will, the State takes it all.”

This is not true. New York Estates, Powers and Trust Law sets forth the rules regarding to whom property is transferred to in the event a person dies without a will. It lists the distribution hierarchy; in other words, which individuals should be given priority. For instance, a spouse will receive and take priority over the parents of a decedent.

* * * * *

“A Power of Attorney authorizes my attorney to sign for me.”

A Power of Attorney authorizes your agent, a person whom you trust, to act on your behalf in financial matters. The agent need not be an attorney and in most cases, is your closest and most trusted family member or friend. An attorney should prepare the Power of Attorney to ensure that it is fully understood and it is properly executed but an attorney need not be appointed as the agent.

* * * * *

“I get an income tax deduction when I make gifts to my children and their children.”

Annual gifts are not deductible on your income tax return. Only gifts to a qualified charity based on the federal and state income tax laws are deductible. Gifts are not deductible nor will the recipient have to report the gift as income.

* * * * *

“Leaving someone in my will a nominal amount will avoid a will contest.”

Who can contest a will is governed by the laws of the State. In most cases, it is the distributees (those who can take under the law if there was no Will) who have standing to contest. Leaving someone a dollar, ten dollars or a thousand dollars cannot prevent a Will contest. Only a well-executed Will can lessen the chance of a Will contest.

* * * * *

“By jointly titling all my assets, I don’t need a Will.”

That is not completely accurate. Property that is jointly titled passes by operation of law to the joint tenant upon your death but what happens if that person dies with you? If the joint tenant dies with you, the property would pass under the State laws to your next-of-kin depending on the laws of the State since there is no Will. The people receiving your property may not be the people you want to receive your property.

* * * * *

“My father needs care and I cannot have him move in with me. There is nothing I can do but put him in a nursing home.”

This is not necessarily true. There are three levels of Medicaid Assistance in New York State. Depending on the individual’s needs, he might be able to receive personal care services or skilled nursing care at home without ever having to enter a nursing home.

* * * * *