

Debunking Common Misconceptions About Wills

One of the most common reasons clients think they do not need a will is that they do not have enough assets. High-net-worth clients tend to be more proactive about estate planning. However, misconceptions about wills abound, which is a big reason many Americans do not have a will. Misunderstandings about what a will can and cannot do may also be holding a client back from creating—and making the most of—this basic yet crucial estate planning document.

Common myth #1: Wills can be used to avoid probate.

Most clients prefer to minimize state involvement in their personal affairs. This preference can be used to motivate them to create a will and avoid dying intestate, an outcome that leaves the fate of their estate in the hands of the probate court and state inheritance law.

It should also be stressed that using a will alone is usually insufficient to avoid the probate process entirely. Most states have abbreviated or “shortcut” procedures for probate estates worth under a certain threshold set by state statute and for those estates without creditors. However, most estates are worth more than that lower threshold amount or have creditors and, therefore, will be subjected to the full probate estate proceedings.

It is important to note that probate is not necessarily a bad thing. It does cost money in attorney fees and court costs and can delay distributions to beneficiaries, but it can also ensure that an estate is administered accurately and legally.

If clients strongly prefer avoiding probate, they may be interested in strategies to circumvent the process, such as using trusts and beneficiary designations on certain accounts and policies.

Common myth #2: A will cannot be used for tax planning.

Tax planning involves significant overlap of financial planning and estate planning.

With the federal estate, gift, and generation-skipping transfer (GST) tax exemption amount set to decrease sharply at the start of 2026 and revert to pre-2017 levels, tax planning discussions are taking center stage in many advisors’ offices. Proposals to decrease the exemption have some clients worried and may justify employing advanced estate planning strategies now, ahead of the 2026 sunset.

Prior to the current era of super-high exemptions, trusts were frequently used in estate planning to reduce or eliminate estate, gift, and GST taxes. These strategies are still generally available today, but wills can also be used for tax planning.

Trusts can be created by an individual during their lifetime or upon their death according to the terms of their will. The latter are known as *testamentary trusts*, a type of irrevocable trust created at the willmaker’s death. Unlike other trusts, testamentary trusts are subject to probate. The estate executor sets them up once the probate court has verified the will’s authenticity.

Testamentary trusts can be structured in various ways that may be utilized for estate and GST tax planning:

- A **qualified terminable interest property (QTIP) trust** is established for the benefit of the willmaker's surviving spouse. Assets transferred into a QTIP trust qualify for the unlimited marital deduction, mitigating estate taxes due upon the first spouse's death. However, this may only defer estate taxes owed until the second spouse passes away.
- The decedent can leave their entire estate (or a large part) to their spouse. The surviving spouse can then disclaim or say "no, thank you" to some or all of their inheritance from their spouse. This disclaimed portion goes into a **bypass trust** (which can go by many different names such as *credit shelter trust* or *family trust*), which can benefit the surviving spouse (and others chosen by the deceased spouse) during their lifetime but will not be included in the surviving spouse's estate at death. This trust may be created to use the willmaker's lifetime exclusion amount at their death instead of the unlimited marital deduction.
- Because the GST tax exemption is separate from the lifetime estate and gift tax exemption, clients can take advantage of it with advanced will-based planning by creating **generation-skipping trusts** to allow more resources to flow to younger beneficiaries without having to worry about additional estate taxation at each generation.

The creation of tax-saving trusts with will provisions can be quite complicated in practice, but your clients should know that will-based estate plans have a place in tax planning.

Common myth #3: Creating a will is cheaper than creating a trust.

Creating a basic will might be cheaper than creating a basic trust, though it is not an apples-to-apples comparison.

Ultimately, it comes down to how complex the document is. Trusts tend to be more complex than wills and, therefore, are typically more expensive to prepare. However, trusts and wills can contain similar provisions that require a comparable amount of time to research and draft properly.

The costs of creating the plan are just one cost factor. Postdeath administration costs also need to be factored in. Because wills are subject to probate, they may be more expensive to administer, especially if they contain provisions ordering a testamentary trust to be created.

Cost is a consideration in every estate plan. So, the client must engage in a cost-benefit analysis. It is also important to understand the potential costs of *not* having an estate plan. The same analysis should apply when trying to reduce costs using online planning tools or cutting corners on a plan that deserves a higher level of thought and detail. Estate planning is not an area where it pays to save money.

We recommend that clients refrain from becoming fixated on a set price that they want their estate plan to cost. It will be better for them in the long run to adjust price expectations based on the size and complexity of their estate and their needs. Unless a client is truly cost-constrained, in which case a simple, low-cost will is better than no plan at all, the budget should reflect a client's particular circumstances and goals.

The More You Know, the Better You Can Serve

Estate planning myths are helpful for identifying areas where a client could benefit from additional information and education. The more educated you are about estate planning, the more you can help clients recognize gaps in their plans and offer actionable solutions.

We have only begun to scratch the surface of how estate planning intersects with financial planning on matters like wills, trusts, probate, and taxes. Many of the issues raised in this letter can—and do—fill entire books. To learn more about these topics and discuss specific strategies, please get in touch.