

ESTATE PLANNING MATTERS



A WORD OF CAUTION – DON'T LET YOUR ESTATE PLAN'S WIRES GET CROSSED

There's a lot more to an estate plan than the legal documents – the Will, Trust and Powers of Attorney. In fact, there are other things that are *even more important*.

First, there is the question of how an individual asset – be it real estate, a bank account or investment account – is titled. If you have an asset that is jointly-titled, then it does not matter what your Will or trust says – if you die, the other joint owner automatically becomes the owner. If you created a Living Trust in order to avoid probate, but your account is titled in your individual name and not in the name of the Trust, then that account will have to go through probate.

Secondly, if the asset has a designated beneficiary – as is typical with life insurance policies, annuities, Individual Retirement Accounts (IRAs) and 401(k) plans – then, again, any terms you may have included in your will or trust may not come into play. The benefits will be paid to the person or persons whose name(s) you wrote on the beneficiary designation form.

Similarly, if you have a will or trust, but in the course of opening up a bank or investment account you completed a form to designate a “Transfer on Death” (TOD) beneficiary, then that designation will take effect regardless of the instructions contained in your will or trust.

If your estate planning documents include provisions for a trust to provide for minor children or for a multitude of other reasons, unless the beneficiary designation form directs the life insurance, retirement account or other asset to that trust, the funds will never reach the trust and your estate planning may be for naught.

Unless care is taken to make sure that asset titling and beneficiary designations are properly coordinated with your estate planning documents, it is possible that you can get your “wires crossed” and your estate plan gets disrupted.

For example, you may change jobs and in the course of filling out the paperwork regarding retirement and life insurance benefits you fail to refer to your will or trust, and simply list your spouse and children by name, thus preventing the terms of the will or trust to come into play.

Additionally, someone at your bank suggests you add your child's name to your bank account, or name them as "POD" beneficiary to "avoid probate" and to ensure that the funds are immediately available in the event of your death. This may disrupt your estate plan because the Will or Trust will not control the disposition of the bank accounts. The funds will all belong to the surviving account holder and they will not be required to follow the directions included in your Will or Trust.

Another scenario we are seeing more frequently is a client with an investment account titled in a Living Trust that purchases an annuity. While the terms of the trust will control the distribution of the other investments, the annuity most likely has its own internal beneficiary designation provisions, and those provisions will prevail over the terms of your trust. Therefore, it is critical that the annuity beneficiary designation is consistent with the trust terms.

This illustrates why it is important to review your estate plan every few years and include in that review an examination of the status of the beneficiary designations and asset titling to ensure they are consistent with your estate planning objectives.

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