

WILL YOUR ESTATE PASS TO YOUR SPOUSE?

Many of our prospective clients who are married come into our office and believe that upon one spouse's death, all of their assets will automatically be transferred to the surviving spouse. Though this may be true in some situations, it may not be true in all. How assets are transferred upon the owner's death really depends on how the assets are titled. For example, anything that is jointly held with another person with a right of survivorship will automatically pass to the surviving owner upon one owner's death. In the case of a bank account, the surviving owner would just bring a death certificate to the bank to prove the death of the deceased owner and they can take the money and do with it what they want.

Assets such as retirement accounts or life insurance policies allow for a beneficiary to be named so that the benefits will be transferred to the named beneficiary upon the owner's death. We have seen cases where there is no beneficiary named and the institution does not have a "next of kin" succession in place, so the account is then payable to the deceased owner's estate. This can not only cause tax implications with retirement accounts specifically, but also requires the administration of the estate through probate to occur before the beneficiary of the estate can gain access to the account.

The remaining assets that are in a person's sole name (without a beneficiary or joint owner) are required to go through the probate process. Probate is an administrative process that requires certain filings with the Register of Wills, which include a Petition for Probate for a Personal Representative to be appointed, an Inventory of all assets showing appraisals and other proof of valuations, and an Accounting of how the assets were liquidated and distributed after expenses were paid. As long as one spouse has assets in his or her sole name, the probate process is required before the surviving spouse can take ownership of them.

A common misconception is that even if the assets have to go through probate, they will all automatically be distributed to the surviving spouse when the process is complete. This is not true unless the deceased spouse has a Will that distributes the estate in such a way.

Maryland has laws of intestacy that govern who become the beneficiaries of an estate if a person does not have a Will. For example, if a married couple has minor children and one spouse dies without a Will, the surviving spouse would only receive one-half of the probated assets while the minor child or children receive one-half of the probated assets. Even if a married couple has adult children, there is still a split of the probated assets between the surviving spouse and children. This can especially become a problem when the family residence is titled only in the deceased spouse's name and by law, the house would need to be re-titled in the surviving spouse and children's names. A deceased spouse's living parents may even share in the estate if the marriage was less than five years long and there were no children born or adopted to the couple.

When preparing estate plans for married couples, we consider the titling and beneficiary designations for all assets so that we are confident in saying that the estate plan was created the way our clients want. If you are unsure how your assets will be distributed upon your death and want to consider your estate planning options, please contact our office for a free initial consultation.



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