

What You Need To Know About

**LIFE, ESTATE &
INHERITANCE PLANNING**

Probate Versus Non-Probate Assets

Upon death, a decedent's property will transfer in one of three ways:

- Contract
- Operation of law
- Probate

Probate Versus Non-Probate Assets

- Only property subject to probate will transfer under a decedent's Last Will and Testament.
- Last Will and Testament has no effect on property transferred by way of a written beneficiary designation or by operation of law.

Probate Versus Non-Probate Assets

- Due to growth of retirement assets, a large majority of property is transferred outside of probate by way of a beneficiary designation form
- Need to coordinate designations with overall estate planning goals and update designations as needed

Wills vs. Trusts

A Will is a document that sets forth how the testator desires his or her probate property to be transferred upon death. Only property subject to probate will transfer under the decedent's Last Will and Testament.

Wills vs. Trusts

A trust is a legal arrangement by which the Trustee agrees to hold legal title of assets contributed by a Grantor on behalf of the Grantor's designated beneficiary.

Wills vs. Trusts

Last Will and Testament has no effect on property transferred pursuant to a legal agreement.

Living Trusts

Living Trusts – Revocability

- Can make amendments to the trusts
- There is room for flexibility
- Want conduit tax treatment

Living Trusts

There are numerous reasons to set up this type of trust:

- Privacy
- Avoidance of Will Contests (difficult for potential claimant to contest trust versus Will)
- Asset Protection (Limited Availability for Grantors)

Beneficiary Designation Forms

- Plan participants designate their choice of primary and contingent beneficiaries
- Income tax consequences will differ depending on the designated beneficiary selected and whether decedent received RMDs prior to death

Sample Beneficiary Designation Form

Under qualified plan, spousal consent is required if participant's spouse is not designated 100% primary beneficiary

Sample Language:

I, _____, (insert name of participant spouse) hereby consent to the selected beneficiary designated on this form. I acknowledge that my spouse's selected beneficiary will receive the percentage of my spouse's plan account stated on this form. I also understand that under the plan, I have a right to receive 100% of my spouse's plan account upon my spouse's death if I do not consent to the beneficiary selected on this form. This spouse's consent is irrevocable and cannot be reversed. My consent is provided freely and voluntarily.

Sample Form Language

Multiple Beneficiaries Equal Distribution:

My daughter, Lisa Smith, my son, Brad Smith and my son, Michael Smith in equal shares or to the survivor among them

Multiple Beneficiaries Unequal Distribution:

Two-Thirds to my daughter, Lisa Smith and One-Third to my son, Brad Smith, per stirpes

Testamentary Trust Under Last Will:

Lisa Smith, as Trustee u/w dated 02/04/2017 fbo my granddaughter, Mary Smith

Failure To Update Beneficiary Designation

United States Supreme Court case *Hillman v. Maretta* 133 S. Ct. 1943, 186 L. Ed. 2d 43 decided in 2013

- Virginia's domestic law statute nullified property transfers to ex-spouses
- Commonly referred to as a "*divorce revocation statute*"
- Ex-spouse received significant death benefits under Federal Employee Group Life Insurance and surviving spouse file action based on Virginia law

Failure To Update Beneficiary Designation

United States Supreme Court case *Hillman v. Maretta* 133 S. Ct. 1943, 186 L. Ed. 2d 43 decided in 2013

- Case was appealed up to the Virginia Supreme Court, which reversed lower court's decision finding that Federal law preempted State divorce revocation statute
- Case was appealed to US Supreme Court which affirmed
- Congressional intent that proceeds belong to the named beneficiary and no other

Failure To Name A Beneficiary

- If no beneficiary designation on file, the plan document or state law controls who becomes beneficiary
- Often the decedent's estate becomes the beneficiary when decedent fails to designate a beneficiary
- Estate designation shortens possible income tax deferral period

Incapacitated Adults

Guardianship/Conservatorship Standard

A guardian or conservator is needed when a person lacks the capacity to make or communicate significant responsible decisions about his/her health or safety or about the management of his/her property. See OCGA §§ 29-4-1(a); 29-5-1(a).

Incapacitated Adults

In determining the appropriateness of the appointment, Courts also look at whether there are less restrictive alternatives to the conservatorship. See OCGA §§ 29-4-1(f); 29-5-1(f).

Incapacitated Adults

Less restrictive alternatives:

- Durable Financial Power of Attorney
- Healthcare Advance Directive

Disabled Beneficiaries

Special needs trust

A special needs trust protects disabled individuals from becoming ineligible for means-based government programs such as SSI and Medicaid as a result of carefully drafted trust provisions.

Disabled Beneficiaries

Special needs trust

The purpose of a special needs trust is to provide supplemental resources to the disabled individual above what is provided through government assistance. The trustee should not have discretion to supplant, impair or diminish the assistance the beneficiary receives from means-tested benefits.

THANK YOU

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