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Common Estate Planning Options

This document will outline the four primary ways property passes from the person who dies (Decedent) to the living; describe the advantages and disadvantages of each option to help you identify specific issues that need to be resolved through your estate planning process.

I. JOINT OWNERSHIP

Joint ownership of assets including securities, real estate, and bank accounts, is established by the client and the institution that is custodian of the asset. When established, in the majority of the cases, joint ownership will control how an asset is distributed at the death of one of the owners.

A. Advantages

1. It is simple to set up.
2. It allows each person equal access to the asset, so if one of the owners is incapacitated, the other owner can still manage the asset.
3. It is a simple process to collect or redeem the asset at the death of one of the owners.

B. Disadvantages

1. Each owner is deemed to have an equal ownership interest in the asset, regardless of whose money actually created the asset.

Example: Mother adds her daughter to her bank account. The daughter subsequently files for bankruptcy. The asset is part of the bankruptcy estate and the bankruptcy trustee could claim the asset to pay to the daughter's creditors.

2. Because joint ownership controls the distribution of the asset after the death of one of the owner's this could offset an estate plan and one beneficiary would inherit more than the other beneficiary.

Example: Parent owns a house worth \$100,000 and bank accounts worth \$100,000. Parent has two children and wishes to divide estate equally between each child. Parent adds one child to the bank accounts as co-owner. The result is the child on the bank account will receive \$150,000 (all of the bank accounts plus half of the house value) of the total estate and the child not on the account will receive \$50,000 of the total estate.

3. Because each owner has the right to the account, any of the owners could make withdrawals from the account without the knowledge or consent of the other owner.
4. For assets that have capital appreciation such as stocks, the survivor loses part of the stepped up basis and would have to pay a higher amount of tax if the asset is passed by joint ownership and subsequently sold.

II. BENEFICIARY DESIGNATION

IRA's, Retirement Accounts, Life Insurance, Annuities and some other bank accounts allow the owner to designate a beneficiary of the account.

A. Advantages

1. The named beneficiary or beneficiaries inherit the account(s) at the death of the owner through a simple process of filling out a claim form and then having the company pay or transfer the asset to the beneficiary. The beneficiary only has a right to the account after the death of the owner.

B. Disadvantages

1. Because the beneficiary has no right to the account as long as the owner is alive, the beneficiary could not access the funds for the owner if the owner needed the monies. NOTE: A Durable Power of Attorney could resolve this issue.

2. The owner has to be careful that the beneficiary designation does not upset the estate plan.

Example: Parent has two children and wishes to divide the estate equally. Parent sets up two CD's for \$100,000 each and names each child as sole beneficiary on each CD. Parent cashes in one of the CD's and uses the proceeds to pay for healthcare. Unless the beneficiary designation is changed on the remaining CD, the child named on the CD that was cashed in will receive nothing and the entire value of the CD that wasn't cashed in will go to the named beneficiary sibling.

3. When the beneficiaries want to collect the assets, some companies may require all the beneficiaries to complete their claims process before the company will pay out the asset. If there is friction in the family or if one of the beneficiaries is unable or unwilling for some reason to complete the claims process, then this could delay the process of collecting the monies.

In each of the first two examples, the money goes to the joint owner or beneficiary, as stated. However, if there are ongoing expenses; such as final bills, income or estate taxes, maintenance expenses on real estate, the joint owner or beneficiary of the assets are not required to pay those costs from their portion of the proceeds.

III. LAST WILL & TESTAMENT

A Last Will & Testament (Will) is a properly signed and witnessed document that directs for the distribution of assets after the death of the person making the Will (Testator).

A. Facts

1. The only Will that ever counts is the last properly signed and witnessed one.
2. The Will never takes effect until after the death of the Testator.
3. The Will only controls assets titled solely in the Testator's name.

B. Advantages

1. Relatively simple and inexpensive to create
2. Easy to change
3. There is nothing that is additionally required

C. Disadvantages

1. Provides for no authority to manage or care for the Testator during their lifetime. NOTE: This can be addressed through a Power of Attorney and Health Care Surrogate.
2. It does require the probate process after the Testator passes away. Probate is not a horrible process, but it does require:
 - a. The outstanding bills of the person who passed away (decedent) be paid
 - b. The assets be inventoried
 - c. The beneficiaries be informed of the existence of the Will
 - d. The Personal Representative inform the beneficiaries of the settlement process and how the money was distributed

IV. REVOCABLE LIVING TRUST AND POUR OVER WILL

A Trust is a more extensive document. In a standard Trust, the Grantor creates the Trust and acts as their own Trustee. The Trust allows the Grantor to amend or revoke the Trust at any point as long as they are competent to do so. The Trust provides that if the Grantor is unable or unwilling to act as the Trustee, a Successor Trustee can act in that capacity and provide for the Grantor during their lifetime. The Trust also provides how the Trust will be distributed after the Grantor's death. The majority of Living Trusts also have a simple Will referred to as a "Pour Over Will." This Will states that if there are assets solely in the Decedent's name at the Decedent's death, those assets should be transferred to the Trust and disbursed according to the terms of the Trust.

A. Advantages

1. Provides for management during the Grantor's lifetime if the Grantor is unable or unwilling to manage or wants to employ a professional Trustee to assist them.
2. Avoids the probate process after the Grantor's death for assets titled in the name of the Trust.

B. Disadvantages

1. A more sophisticated document to create and amend, therefore costs more.
2. Requires that the assets be transferred into the name of the Trust so the Grantor has to be able to follow through with the various asset holders.
3. The Successor Trustee is supposed to follow rules and requirements for the management of the Trust either during or after the Grantor's life. However, if the Trustee does not follow those requirements, it is much more complicated for the beneficiaries to require the Trustee to comply with the law.

SUMMARY

This document provides a general overview of Estate Planning Options. Estate Planning is a personal endeavor and what is best for you and your family will depend on your unique situation. If you wish to discuss the options further, please call 727-584-2110 to schedule an appointment with one of our attorneys.