

Last Line of Planning

“Are They Your Wishes or the State’s”

By: Doug Horn, CFP®

Everyday there is news of someone’s death. Whether the report is of someone who lived a ‘full’ life or sadly reporting the loss of a younger life, their last wishes will be soon known by their family. As you most likely guessed, I am referring to their Will. For many, it is non-existent and thus state law prevails. In Tennessee, when someone passes away ‘*intestate*’, without a will, the heirs must look to state law to determine how the probate assets pass to the next owner. Though I am not an attorney, most CERTIFIED FINANCIAL PLANNERS™ see it as their responsibility to assist in the proper and efficient transfer of estate assets to the desired heirs of the decedent.

The key in the above example is determined by what is included as ‘probate’ assets. The decedent’s estate includes all assets they owned or had in their control. But, probate assets are those assets within the estate which do not pass to the successor owner by contract, ownership structure, or beneficiary designation. Thus, assets such as retirement accounts, life insurance policies, and some bank or investment accounts pass automatically to a successor owner due to previously signed documents. For bank and investment accounts, it depends upon how the account is titled. For many accounts “JTWROS” may be part of the account description, and if so, it has a specific meaning and results in the account automatically passing to the remaining owners of the account. This registration identifies accounts with multiple owners like husband and wife or business partners as examples, and when one of the owners dies, the remaining owner or owners now own the account. This is due to the meaning of the “WROS”, With Rights of Survivorship. While JTWROS may be the most common ownership type with survivor benefits, there are other types of ownership registrations which also include survivorship benefits.

The use of trusts can also provide legal transfer of a decedent’s assets to the successors named in the trust. However, for this to work properly, the assets must be owned by the trust. If they are, they are part of the estate but once again not considered probate assets as the trust provides the legal transfer to the heirs.

Retirement and insurance policies pass to the successor owners via a beneficiary statement. For many, this is a document which has not seen the light of day since it was signed. Best practices include reviewing this document annually or after any major event such as marriage, divorce, birth of a child, or the death of a family member. For non-retirement accounts, a beneficiary designation can also be attached to the account by signing a POD or TOD form. This implies Pay on death or Transfer on death. Once again, this is a way to avoid probate, but is not always the most effective way to take care of heirs.

It is up to the Courts to provide the process of transfer through *probate* for assets that do not transfer to a successor owner. If trust assets, joint tenant accounts with survivor benefits, and those with beneficiary agreements all pass outside of probate, what does go through probate? While it may be presumed to be few assets, it can be quite large. All personal items such as their belongings, furnishings, collections, jewelry, any account or asset in just their name as well as those joint assets registered as *tenants in common* or *joint tenants in common* are subject to probate.

For the those dying intestate, state law dictates who is to inherit the decedent’s assets and in what share. Many may believe this would mirror their own wishes, but it may not. For Tennessee, spouses and children now share the ownership which can complicate future transactions. It can also be expensive since the court may require an impartial administrator be involved for minors who inherit assets. It also fails to consider any heirs ability to properly manage the assets they inherit which reminds me of the phrase, “Show me the money” from the film *Jerry Maguire*. The lack of a Will can add many complications to what is already a difficult and emotional situation.

Taking the time to prepare and sign a Will is a tremendous gift to your loved ones. Giving thought to how each heir will be treated and taken care of is the decedent’s last word and act on behalf of their loved ones. Implementing a Will

Doug Horn, CFP®, Registered Principal. Securities offered through Crown Capital Securities L.P. Member FINRA & SIPC. Advisory and Tax services offered through QUALITY FINANCIAL CONCEPTS. CCS and QFC are not affiliated.

Last Line of Planning, continued:

assures your wishes are heard on all assets passing through probate. But, you should remember to review the registration and beneficiary terms for those assets which pass directly to heirs making sure those terms coordinate with the language and objectives stated in your Will. Due to its importance and in an ever-changing world, your Will should be reviewed at least annually or when major events occur.