A Publication of Brian Carruthers & Associates

Fourth Quarter 2016

Passing on Assets Without a Will

The death of a celebrity always brings out articles reflecting on their lives, successes and mistakes, and the effect they had on others. But within the investment advisor realm, articles almost always revolve around the effectiveness of their estate planning and in particular...the will.

Wills get a lot of attention because once they go through probate court (a process that can take months), they become public documents. A copy is given along with a listing of all the assets of the estate to all the heirs and beneficiaries as well as the estate's executor, lawyer, accountant and even the IRS.

That's a lot of disclosure that you may not want to happen. In which case, it's time to look at how to die without having the majority of your assets and how you choose to dispose of them disclosed to the public or for that matter, family members and other potential heirs.

"Pay on Death" and "Transfer on Death" Accounts

You can convert your bank accounts, retirement accounts and even brokerage accounts to payable on death (POD) or transfer on death (TOD) by completing your financial institution's beneficiary designation form. These assets pass directly to the named beneficiaries on your death, are not subject to probate, and stay out of the public eye. Some states even allow transfer on death designations for vehicle registrations and real estate deeds. Beneficiary designations take precedence over any language in your will, however, so make certain and keep these designations up to date.

Money inherited through a POD or TOD account is included in the calculation of estate taxes and may be subject to creditor claims as well as estate taxes.

Joint Accounts

Certain forms of joint ownership of a property also allow assets to pass directly to the surviving owner(s). These include joint tenancy with right of survivorship and "tenants by entirety" accounts (applicable only for married couples, or in a few states, by same-sex partners who have registered with the state). In "community property" states, community property automatically passes directly to one's spouse. Here again, while the property avoids probate court, it may not avoid the claims of creditors or estate taxes.

Living Trusts

A living trust is a trust you set up and administer while you are alive, keeping full control over all property held in trust. The big advantage to making a living trust is that property left through the trust doesn't have to go through probate court and there is no disclosure of the terms of the trust. Upon your death, your executor distributes the assets to your beneficiaries according to the trust provisions. The biggest mistake people make with living trusts is failing to transfer assets into the trust before they die.

Living trusts are still vulnerable to creditor claims and are included in estate tax calculations.

An Irrevocable Trust is not included in your estate's value for tax purposes and properly set up, will protect assets from creditor's claims, but the assets you place in the trust cannot be retrieved. Once transferred, they belong to the trust.

So why bother with a will?
A will is an essential back-up device for property that isn't included in beneficiary designations, joint ownership or transferred to a trust. Your will can also be used to establish payment of creditors and estate taxes first from property covered by the will. Without a will, any property that goes into probate will go to your closest relatives in an order determined by state law.

Keep in mind that this a very limited discussion of estates and inheritance and tax impacts of dying and is not intended as legal advice. Make certain and talk to a qualified estate planner to assure that your assets go where you intend and taxes are minimized after your death.

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