

ESTATE PLANNING LAW REPORT

WAYS TO LEAVE THINGS TO PEOPLE
OUTSIDE OF A WILL

MAY 2022

By Nathan Hannah

Some of you have heard me say that probate is the process of changing the ownership of assets that are owned by someone who has died. More broadly speaking, that's really what estate planning is all about. It's setting up mechanisms to pass ownership of your assets to your beneficiaries.

There are many ways to accomplish the goal of passing ownership of your assets to your beneficiaries. One very common method, and the one I am probably asked about most frequently, is through the use of a trust. When you establish a trust for the purpose of passing ownership of assets to beneficiaries, you first transfer ownership of the assets to the trust. That's why any asset that doesn't have another mechanism for transferring it if the owner dies is a candidate for inclusion in your trust.

Even if a trust is your mechanism of choice, however, some assets are usually not included in a trust. The primary example of an asset that generally is not placed in a trust is a tax-deferred retirement account, such as an IRA. Because of tax rules that are peculiar to retirement accounts, it's usually better from a tax perspective for your IRA to be transferred to an individual beneficiary instead of to a trust. That result is accomplished by simply naming an individual as the beneficiary in the document that establishes ownership of the account. That means the account will be transferred directly to the named beneficiary when the owner dies, without need of a trust (or a will) to effectuate the transfer. You generally get a

better tax result by passing your IRA directly to your beneficiary rather than doing it through your trust or will.

Other assets can have beneficiaries designated for them so that there is no need to include them in a trust. The first example I think of is a vehicle that has a certificate of title. In Arizona, you can use a form provided by the state's vehicle licensing agency to do this. The form allows you to designate one or more individuals to receive title to your vehicle if you still own the vehicle at your death.

Another option for vehicles is to include them on your tangible personal property list. The tangible personal property list is a list of specific gifts of tangible personal property (jewelry, collectibles, and antiques are the most common examples) that can be attached to your will, and changed at any time without changing the will. The list cannot be used to make gifts of houses, other real estate, or financial accounts, however, because those things are not tangible personal property.

QUOTE OF THE MONTH

Ignorance more frequently begets confidence than does knowledge: it is those who know little, not those who know much, who so positively assert that this or that problem will never be solved by science.

Charles Darwin
English biologist (1809 - 1882)

There is also a method for naming beneficiaries for bank accounts and certain other financial accounts that's similar to the method for vehicle titles. This method is established by law in Arizona and many other states. It is commonly known as a pay-on-death or "POD" beneficiary designation. The difference between naming a beneficiary for your vehicle and naming a beneficiary for your bank or other financial accounts is that beneficiary designations for financial accounts must be made on the records of each bank or financial institution where those accounts are held. Like the beneficiary designation for your vehicle, the beneficiary designations on accounts can be changed any time while you are still living.

You can also take advantage of a similar mechanism for transferring title to your house or other real estate, by signing and recording a beneficiary deed. The beneficiary deed is also established by law in Arizona and many other states, and works in much the same way as the beneficiary designation on a bank account. I have covered the topic of beneficiary deeds several times in earlier editions of this newsletter, going all the way back to when the Arizona legislature first authorized the use of the beneficiary deed in 2001.

All of these methods of naming beneficiaries can be useful because they will, if done properly, transfer the assets that have the beneficiary designations directly to the named beneficiaries, without the need for a trust or a probate proceeding to administer your will.

There are some situations where a beneficiary designation might actually turn out to be less efficient than a will or a trust, however. A beneficiary designation isn't practical if you have too many individuals named as the beneficiaries. If you have more than one or two beneficiaries to whom you want leave your house, for example, it might be better to handle that in your will. Naming multiple beneficiaries

on a beneficiary deed or a POD account means that there will be multiple co-owners, a situation that's usually better avoided.

Which mechanism or combination of mechanisms is best? That depends on your individual circumstances. If you're not sure, I suggest that you consult your estate planning attorney about all the possible alternatives.

STATUS UPDATE

Many of you have asked about the status of my newsletters, and about my status, so here's an update. I'm still here at my law office, just on a slightly reduced schedule, handling all of your estate planning, estate and trust administration, real estate, and business matters.

The schedule change is making it possible for me to continue to work part time as an accountant for MOD Ventures, where I keep the books, prepare financial statements, process payrolls, prepare sales and employment tax reports, and do other accounting tasks for a variety of small businesses.

I have not produced an Update or a Report since October because, believe it or not, I just haven't had the time. I never meant to abandon you.

Thank you to all of you, my faithful readers, for your kind support.