

Professional Portfolio

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Prevent Unintended Consequences in your Estate Plan

Most people prepare Wills and think that all of their property distribution issues upon their death have been taken care of. What they often do not realize is that how property is owned at the time of death will affect to whom that property ultimately passes. In addition, beneficiary designations on assets such as life insurance policies, IRA's, annuities, 401(k)'s and bank accounts also affect the distribution of property upon death. What many people fail to realize is that joint ownership of property and beneficiary designations supersede the terms of your Will. Property that is jointly owned or contains a beneficiary designation is what is known as non-probate property. Non-probate property passes upon death, unaffected by the terms of your Will. Probate property on the other hand, passes pursuant to the terms of your Will. Probate property is typically property that is owned in the deceased's name solely and is not subject to a beneficiary designation. When discussing estate planning with my clients I stress the importance of understanding the difference between probate property and non-probate property and the fact that property that is jointly owned or contains a beneficiary designation (non-probate property) passes outside the terms of the Will and indeed supersedes the terms of the Will and passes directly to the joint owner or the named beneficiary. Many people are surprised to hear that this is indeed the case. They think a Will controls all of an individual's property upon their death and are surprised to find out that a Will only controls that property that is owned in the deceased's name alone.

There have been occasions where a family has come to my office with a deceased parent's Will that states that all property is to be divided equally among the four surviving children. What they do not realize is that the deceased parent has placed one of the children on as joint owner of all their accounts (just in case someone needs to access the parent's money should they become sick or incapacitated). What this does is remove all of the jointly owned property from the operation of the terms of the Will. It means that one child takes all of the deceased parent's property by virtue of joint ownership and the rest of the children get nothing, even though the Will states that all four of the children are to receive an equal share of the estate. This is why it is so important to be aware and understand the consequences of joint ownership and beneficiary designations.

Just as with the example with the Will, a beneficiary designation removes property from the operation of the Will. A life insurance policy that designates a named beneficiary is not controlled by the terms of an individual's Will. The proceeds of a life insurance policy are paid directly to the named beneficiary without any consideration for the terms of the Will. This result would be the same for any type of property that contains a beneficiary designation such as IRA's, 401(k)'s, annuities and the like. In addition, bank and brokerage accounts can also have beneficiary designations. Oftentimes these beneficiary designations take the form of POD (payable on death) accounts, TOD (transfer on death) accounts and ITF (in trust for) accounts. All of these types of designations have the same effect as a named beneficiary would in a life insurance situation.

To avoid unintended consequences, it is critical to review how assets are owned (either solely or jointly), as well as the beneficiary designations on any of the assets when you are preparing your Will and doing your estate planning. You should consult with an attorney to ensure that upon your death your property actually passes to those individuals that you intended and not create a situation where your heirs are disappointed because you failed to take into account the operation of jointly owned property and beneficiary designations in your estate plan.



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