



THE FORGOTTEN STEP IN ESTATE PLANNING: Beneficiary Designations

Individuals often believe that a last will and testament is sufficient estate planning. However, a complete estate plan includes a last will and testament and planning for incapacity with a financial power of attorney and an advance health care directive. In some cases, a revocable living trust will also be included in the estate plan. Although executing these estate planning documents is a key part of estate planning, it is not the end of the process. There is a final, underrated, and forgotten step in the estate planning process: beneficiary designations.

1. Non-Probate Assets

Non-probate property is property the decedent owned or controlled at the time of his or her death that transfers after death as a matter of law or pursuant to a contract. These assets are said to bypass the court process of probate, and involvement of a personal representative appointed by a probate court is not necessary to pass the title. The decedent's last will and testament does not control the distribution of non-probate property unless the decedent directed any death benefits to his or her estate.

In general, non-probate assets are those that are jointly owned, owned in trust, or controlled at death by beneficiary designations. The following are some typical examples of non-probate assets that include beneficiary designations:

- Individual retirement accounts (IRAs)
 - 401(k) plans
 - Annuities
 - Life insurance policies
 - Bank accounts or investment accounts with transfer on death (TOD) and payable on death (POD) designations
- Holding assets within an asset protection trust is typically recommended over outright gifting of assets for a number of reasons.

2. Adverse Consequences of Not Updating Beneficiary Designations

A beneficiary designation overrides a distribution set forth in a will. Therefore, if you are changing or updating your estate planning documents and do not also change or update your beneficiary designations on non-probate assets, distribution upon your death may not match your intent.

Here is an example of how forgetting to update beneficiary designations can damage an estate plan: Mrs. Client met with an estate planning attorney after her husband passed away. Mrs. Client executed a last will and testament in which she left her estate to her three children in equal shares. Mrs. Client thought that this meant her children would share everything she owned which included the following: a small checking and savings account, a large investment account, a life insurance policy, and an IRA.

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Although Mrs. Client completed her estate planning documents, she neglected to review and update her beneficiary designations on her non-probate assets. Upon Mrs. Client's death, the assets were distributed, but not as Mrs. Client had intended.

- First, the two bank accounts were the only asset Mrs. Client owned with no beneficiary designation. Therefore, the money in the bank accounts was distributed pursuant to Mrs. Client's will to all three children.
- The investment account, on the other hand, had a payable on death (POD) designation. Mr. and Mrs. Client had designated a beneficiary when the account was initially funded and before Mr. and Mrs. Client had any children. Since Mrs. Client did not change the beneficiary designation when she was working on her estate plan, the investment account was distributed to Mr. Client's brother after her death.
- Mrs. Client had intended the life insurance proceeds to be used for her funeral and burial expenses. Mrs. Client had designated her husband as the primary beneficiary and then her oldest child as the contingent, or backup, beneficiary. Because Mr. Client was deceased, the oldest child received the life insurance proceeds; however, she is not required by law to use the funds as Mrs. Client intended.
- Finally, Mrs. Client had named her husband as the primary beneficiary of her IRA. She did not designate a contingent beneficiary though. Mrs. Client's IRA became payable to her estate and was controlled by her will. Unfortunately, a retirement account made payable to an estate loses tax advantages that can be preserved when naming an individual.

This situation could have been avoided if Mrs. Client had confirmed the beneficiary designations of her non-probate assets and changed or updated them to be consistent with her overall estate plan.

3. Naming Beneficiaries

Unfortunately, there is no quick answer to the question of whom you should designate as your beneficiary. Each estate plan requires individualized discussion regarding an individual's goals and the impact on potential beneficiaries. An estate planning attorney can help you choose the designations that fit best with your personalized estate plan.

There are several beneficiary designation issues that should be considered and mistakes that can be avoided with the assistance of an estate planning attorney. For example, you may wish to designate a loved one with special needs, or your beneficiaries may be minor children who should not receive distributions outright. In these circumstances it may make more sense to designate a trust or an estate as the beneficiary rather than the individual. Yet, when dealing with retirement accounts, it may make more sense to designate an individual rather than a trust or an estate to take advantage of the potential tax deferment.

4. Updating Beneficiary Designations

Just like your will, beneficiary designations should be reviewed every few years and especially any time the account holder experiences a life-changing event such as the death of a loved one, divorce, marriage, or change in financial status.

You should contact the insurance companies and financial institutions with which you have any policies, contracts, or accounts with beneficiary designations, including retirement accounts. You should request a written confirmation of the current beneficiary designations and ask for forms that would allow you to change your beneficiaries. If you decide that you want to change your beneficiaries, then you will already have the forms to do so. If you update your designations on paper forms (instead of through an electronic account where you can instantly see the change), you should request written confirmation that the change was processed after you submit it.

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