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ESTATE OF THE UNION

A Newsletter from the team at Stanziola Estate Law

A Wealth of Options for Your Wealth

If there is one thing that estate planning attorneys are not lacking, it's the amount of options they have at their fingertips to assist you, the client, in the disposition of your estate. With all the different options, it can be a bit overwhelming knowing where to start. This article is the first in a series of newsletter articles that will discuss some of the more common avenues utilized to pass your estate to your heirs. This first article will provide a quick overview of those options, while the subsequent articles will go deeper into the details of each of those outlined here. Please note that the information below is by no means exhaustive, nor is it intended to provide any type of advice.



Probate

Probate is the default court process that your assets will be subject to if they are not otherwise accounted for via some of the other avenues listed in this article. A primary goal at the forefront of all estate plans is to avoid probate if possible as this process can be quite lengthy and expensive.

Defined, probate is the legal process by which the assets of the deceased are properly distributed to the beneficiaries or heirs through an executor or a court appointed administrator. The court's objective, during this process, is to ensure the decedent's debts, taxes, and other valid claims are paid out of estate assets. Only after that is done, is the remainder estate distributed to beneficiaries or heirs.

Intestate

If you do not have any type of estate plan in place when you die, you have been deemed to have died "Intestate". This means your assets will be distributed based on your particular state's intestate succession laws. It is left to the probate court to determine who the beneficiaries are and what they are entitled to.

Often times, the court's distribution of the assets can vastly differ from what the decedent would have wanted however, without a valid Will or Trust in place, the court's rulings are final, and no exceptions are made.



Please note that the information in this article is by no means exhaustive, nor are we representing that we favor one option over another. Every client's situation is different and, many times, it will take a combination of estate planning strategies to develop a well-drafted plan for you.

Last Will and Testament

A Will is an estate planning document by which you (the testator) expresses your wishes as to how your property is to be distributed at death. The testator names a person (the executor) to oversee managing the estate and properly distributing the assets, to your heirs, according to your wishes.

A Will provides you with control over how your estate gets distributed however, the estate must still go through probate prior to final distribution to your heirs.

Transfer on Death (TOD)

A Transfer on Death or, TOD, allows you to transfer real estate and other titled property (cars, boats, etc.) to a beneficiary upon your death. A TOD can be revoked at any time by the Owner and is only effective at the time of the Owner's death. By using a TOD, you avoid probate with that specific asset.

A TOD is a cost-effective alternative to a living trust if all your assets are eligible for a TOD or Beneficiary Designation (discussed below). However, use caution when going this route as, at the time of this writing, only about half the states recognize TODs; the others require a Will signed in the presence of witnesses in order for the transfer to be valid.

Beneficiary Designation

A Beneficiary Designation is the equivalent of a TOD but for different types of assets. If you have retirement assets (IRA, 401k, etc.) or any type of insurance products, these are often passed on to your loved ones via a beneficiary designation. These designations consist of primary and contingent beneficiaries. A primary is first in line to receive the asset when you die; you can have as many primary beneficiaries as you wish for that particular asset, you just need to ensure that the percentage amounts that you leave add up to 100%. If a primary beneficiary predeceases you and you do not update your beneficiaries, then the asset would go to the contingent beneficiary. Having the asset pass by way of beneficiary designation will avoid the probate process.

Joint Title with Rights of Survivorship

In certain situations, with certain assets, having it jointly titled is an efficient and easy way to avoid the probate process. This is most common between husband and wife with assets such as: real estate, automobiles, checking and savings accounts etc.

Having an asset titled jointly with rights of survivorship allows the other person, often times a spouse, to take full ownership of the asset at your death. Conversely, if the joint owner were to predecease you, you would take full ownership of the asset without subjecting that asset to probate.

Trust

A popular estate planning tool to have your estate passed to your heirs is by way of trust. There are many different types of trusts to account for many different types of situations.

For the purposes of this article, as well as the articles to follow, we will be focusing on a living revocable trust.

A living revocable trust is a lot like a Last Will and Testament insofar as it allows you to direct how your assets will be divided up among your heirs. However, unlike a Will, those assets that are titled in your trust are not subject to probate. Trusts provide you a lot of control over how and to whom assets are distributed in addition to providing tax benefits and additional levels of asset protection.



Did you know...

An estate plan only has authority over the assets specifically under its control? The creation of an estate plan does not automatically provide blanket authority over all of your outstanding assets. In order for your plan to be effective, you must coordinate the titling of your assets so they align with the wishes you have set forth in your plan. Failure to do so could result in having asset(s) subject to probate, left to an unintended beneficiary (i.e. an ex-spouse), or worse.

Do you need to discuss your estate planning options? Do you have an estate plan, but you haven't had it reviewed or updated in quite some time? Please contact us at Stanziola Estate Law for a complimentary consultation so we can discuss what options are right for you!

Questions or comments? Jim Stanziola (jim@stanziolalaw.com) or Nick Adams (nick@stanziolalaw.com)

Note: The contents of this newsletter are intended to be informational; under no circumstances should this be interpreted as legal advice.