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How Can I Control the Distribution of My Estate?

There are a number of ways your estate can be distributed to your heirs after your death. Each allows a different degree of control over distribution, and each poses different challenges and opportunities. If you haven't taken steps already, it's important to consider planning now for the distribution of your assets.

Intestacy

If you die without a will, it is called dying "intestate."

In these situations, the probate court will order your debts paid and your assets distributed. Unfortunately, your assets will be distributed according to state law. Since the state doesn't know your preferences, the probate court may not distribute your assets according to your wishes.

Because intestacy is settled in the probate court, your heirs may have to endure a long, costly, and public probate process that could take six months to a year or more. They will have to wait until the probate process is over to receive the bulk of their inheritance.

And depending on the state, probate fees could be very expensive.

Wills

A will is your written set of instructions on how you want your estate to be distributed. While using a will guarantees probate, it is a more desirable alternative than intestacy.

In a will, you can name a "personal representative" of your estate. This person or institution (e.g., a bank or trust company) will act as the executor and will be appointed to carry out your wishes according to your testament. You can also

nominate a guardian for your minor children and their estates. Without such a nomination, the court can appoint a guardian based on other information, often depending upon who volunteers.

A will can also set forth the trust terms, including who you have named as trustee to manage the assets for the benefit of your beneficiaries. This is often referred to as a “testamentary” trust because it is created as part of the last will and testament and takes effect at the probate of the will.

Trusts

A trust is a legal arrangement under which one person, the trustee, manages property given by another party, the trustor, for the benefit of a third person, the beneficiary. Trusts can be very effective estate planning tools.

Trusts can be established during your life or at death. They give you maximum control over the distribution of your estate. Trust property will be distributed according to the terms of the trust, without the time, cost, and publicity of probate.

Trusts have other advantages, too. You can benefit from the services of professional asset managers, and you can protect your assets in the event of your incapacity. With certain types of trusts, you may also be able to reduce estate taxes.

If you use a revocable living trust in your estate plan, you may be the trustor, trustee, and beneficiary of your own trust. This allows you to maintain complete control of your estate.

While trusts offer numerous advantages, they incur up-front costs and ongoing administrative fees. These costs reduce the value of future probate savings. The use of trusts involves a complex web of tax rules and regulations. You might consider enlisting the counsel of an experienced estate planning professional before implementing such sophisticated strategies.

Joint Ownership

Another way to distribute your estate is through jointly held property — specifically, joint tenancy with rights of survivorship. When you hold property this way, it will pass to the surviving co-owners automatically, “by operation of law.” Because title passes automatically, there is no need for probate.

Joint tenancy can involve any number of people, and it does not have to be between spouses. “Qualified joint tenancy,” however, can only exist between spouses. In common law states, this arrangement is generally known as “tenancy by the entirety.” Qualified joint tenancy has certain income and estate tax advantages over joint tenancy involving nonspouses.

How you hold title to your property may have substantial implications for your income and estate taxes. You should consider how you hold title to all of your property, including your real estate, investments, and savings accounts. If

you'd like to know more about how the way you hold title may affect your financial situation, consult a professional.

Contracts

The fifth and final way to pass your property interests is through beneficiary designations.

If you have an employer-sponsored retirement plan, an IRA, life insurance, or an annuity contract, you probably designated a beneficiary for the proceeds of the contract. The rights to the proceeds will pass automatically to the person you selected. Just like joint tenancy, this happens automatically, without the need for probate.

It is important to review your employer-sponsored retirement plan, IRA, life insurance, and other contracts to make sure your beneficiary designations reflect your current wishes. Don't wait until it's too late.

Many Considerations

A variety of considerations will determine the distribution methods that are appropriate for you. For example, you must consider your distribution goals. By examining your situation and understanding how your assets will pass after your death, you may be able to identify the methods that will help you achieve your goals most effectively.

Likewise, the larger your estate, the more you may want to use a trust to help guide your estate distribution. In addition, you will have to consider any special situations you may have — such as a divorce or a disabled child. All these are important factors to think about.

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