

Coordinate Non-Probate Assets with Your Estate Plan

This article will address non-probate assets and coordinating those assets with your overall estate plan.

Assume that a person has a life insurance policy, an annuity contract with benefits that extend beyond the person's life, an Individual Retirement Account (IRA), a 401(k) retirement account, a bank account set up with another person as a joint tenant with right of survivorship (JTWROS), a second bank account set up as pay-on-death (POD) and a Will.

How many "Wills" does the person have? The obvious answer is one. But if you know more about how non-probate assets operate, you might want to try to make an argument that there are seven Wills.

Why, you say? Because those non-probate designations are very powerful and have the same post-mortem effect as a Will. They direct assets to designated recipients at death. Therefore, the assets designated as non-probate are those that are transferred by non-testamentary means and not under a Will. The designation made with non-probate assets will trump any attempt to send the asset elsewhere by way of the Will. If you agree with the majority of people regarding what they believe to be the most important thing that a Will accomplishes, it's to make sure your property goes to the beneficiaries you selected at death. Non-probate assets do the same thing.

As people age, they collect these types of assets (and we only listed a few). Then they decide it's time to make a Will. When the issue of coordinating non-probate assets with the Will is not addressed, one of the most important steps of estate planning could be left undone.

As people collect these non-probate assets, they name various beneficiaries depending on how they feel at the time. Or, maybe there are not sufficient blanks to list all of the children on the form, so some are not listed. Or perhaps, additional children are born after the beneficiary designation is made. So by the time they make a Will, those previous asset designations do not reflect their true intended beneficiaries.

Sometimes people add their child to their accounts to assist with management without a full understanding of the implications to the person's estate plan. For example, Jane, a widow, makes a Will that leaves her estate in equal shares to her daughter and two sons. Her principal asset is a large investment account. She also has a checking and savings account. As time goes on, it becomes difficult for Jane to pay her bills and manage her investments. Jane's daughter begins helping Jane manage her financial affairs. Jane adds her daughter as a joint owner to her investment account and bank accounts.

Jane didn't understand that the joint ownership account documents included a "right of survivorship" provision, which converted what were probate assets into non-probate assets. Two years later, Jane dies. Jane's accounts all pass by contract 100% to her daughter and nothing passes to her sons. At best, Jane's daughter decides to split her share with her brothers. At worst, Jane's sons are disinherited and left with nothing.

Once you've made your Will, you need to have your attorney address the non-probate assets and make sure that those assets are coordinated with the plan in your Will. It is the last step in your estate plan

and one of the most important.

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