When Creating a Trust Avoid This Mistake

written by warburton | January 11, 2022

Planning for a family's transfer of wealth and ensuring successful execution is a complex process. Clients look to their trusted advisors for guidance when it comes to defining and executing their estate plans for future generations. Too often, individuals and families go through an arduous financial and estate planning process and then fail to finish implementing some of the most important steps: proper titling of assets and accurate beneficiary designations.

As part of a comprehensive estate plan, the trusted advisor must ensure that the trustee or the directed fiduciary understands how assets are intended to be titled and how they align with one another. More importantly, trusted advisors should work with their clients to ensure that all beneficiary designations are up-to-date and that assets are titled correctly.

Failure to title assets appropriately can cause assets to pass in a way the family did not intend. Lack of account titling and beneficiary designations can also lead to increased taxes, frustration, fractured families, and even lawsuits. A good, comprehensive estate plan, coupled with assistance implementing the desired estate plan, can help families avoid these issues.

Why is titling of assets so important?

Titling is a legal term that identifies how and who owns assets. In estate planning, the titling or ownership structure will impact how assets are distributed, whether probate is necessary, and the amount of estate taxes owed.

Probate is the name for the formal court process through which an estate is passed on to heirs after death. Depending on where one lives, it could be a relatively quick process, or it could be long and drawn out — up to 18 months in some states, and perhaps longer. Effective titling of assets helps to ensure that the probate process is skipped entirely. Issues with the probate system include additional costs, delays, and publicity.

Which assets pass through one's will is often misunderstood. Certain types of ownership allow you to pass control of your assets to a joint owner, such as a spouse, without having to go through probate. These include:

- Joint tenancy with rights of survivorship (JTWROS)
- Joint tenancy by the entirety

It is important to note that only individually-owned assets pass through probate – and it can be surprising for surviving spouses how few individually-held assets are owned. A Revocable Trust can be used to avoid the probate system; however, assets must be titled to the Revocable Living Trust to accomplish this.

A revocable trust can also help facilitate the distribution of assets according to one's wishes. Also known as a "living trust" because it is made in one's lifetime, a revocable trust can help ensure the continuity of asset management. A revocable trust also allows individuals to maintain financial control of their assets by naming themselves as the trustee. This provides individuals freedom to move assets in and out of the trust by simply retitling them.

Though a revocable trust offers many benefits, it is not a replacement for a will. A will is still required to direct the distribution of personal assets of value which have not been included in the revocable trust, such as vehicles, boats, collections, and other personal property.

Beneficiary Designations

Beneficiary designation allows assets at death to pass through a contract. Examples are life insurance, annuities, IRAs and your 401(k)s. In each case, the owner of the asset has designated a primary beneficiary who receives the asset at death.

An individual can write in a will that they want all assets to go to one's spouse at death, but if the beneficiary designation on any of these assets names someone other than the spouse, then those assets will not go to the spouse. It is extremely important to remember to update beneficiary designations when getting married or going through a divorce.

Another example: Enrollment in a 401(k) retirement plan requests that a beneficiary is named. At death, the retirement plan assets would automatically be distributed to the named beneficiary, even if the will directs that another party receive the funds. Because there is a designated beneficiary, the retirement assets would not be part of a probated estate, and therefore would not be under the control of a will.

That’s why it is essential to periodically review all the beneficiary designations to ensure they are aligned with the intentions of one’s will. Reviewing beneficiary designations is a key step when crafting a quality estate plan for a family.

Benefits of proper asset titling…

- Avoids probate
- Assists with the management of property
- Gives family members immediate access to assets at death.

Other types of asset titling to consider…

- Tenants-in-Common
- Transfer-on-Death (TOD)
- Payable-on-Death (POD)

Final Thoughts

While wills are designed to control ***how*** and ***when*** assets are distributed upon death, they do not control ***all*** assets. Only assets that fall within the probated estate are under the direction of a will. This would include property that is titled under an individual name, such as real estate, vehicles, jewelry, or other personal property. Assets with named beneficiaries, such as life insurance, annuities, retirement accounts, bank accounts, and brokerage accounts will be distributed directly to beneficiaries upon death, despite the wishes outlined in a will.

A well-thought-out asset titling strategy allows families to control what happens to assets, minimizes exposure to taxes, and ensures that all wishes are carried out in the simplest and most efficient way possible. How assets should be titled depends on the nature of the asset in question and the desired goal, both while you are living and when it comes time to transfer the asset after death.

Asset titling, beneficiary designation, avoiding probate, and the role of trusts in this process can be tricky and complex. Trusted professionals can help to ensure that titling of assets and beneficiary designations are aligned with estate plans so that all desired wishes are achieved. ***Bottom line … finish implementing***

estate plans by ensuring assets are titled properly before death.