

Where does my property go when I die? Title Matters!

By Peri Ann Aptaker, Esq., CPA/PFS, CFP, CBA

I am frequently asked the question “whose name should be on the deed to my house?” There is no simple answer to this question, as the answer is generally derived from an examination of the client’s personal situation, assets, and wishes. However, it is important to understand the impact the title of property can have on the administration of your estate and the transfer of assets to your loved ones.

Assets Owned Individually

These are assets that have only your name on the title. If you pass away, these assets must be probated. Probate is the process of changing titles to assets so that someone (your executor or administrator) can distribute or sell these assets in accordance with your wishes or state law.

If you have a will, then your property will be distributed according to its terms. If you do not have a will, then your assets will be distributed according to the state law on intestacy. The state law may not always be what you want. For example, if you pass away in Rhode Island without a will and are married, there can be surprising results. Under the Rhode Island Intestacy statute, your spouse only inherits one-half of your personal property and receives a life estate in your real estate. This law tends to contradict the wishes of most married couples, who generally want their spouse to receive everything.

There are certain assets that pass by operation of law. These include jointly held assets, life insurance, annuities and retirement benefits. Generally, life insurance, annuities and retirement benefits pass to the named beneficiary. If no beneficiary has been selected, then they pass to your estate and must be probated similar to assets held in your name individually. Below is a discussion of the treatment of various types of joint ownership as well as the treatment of assets placed into a trust prior to your death.

Joint Tenants

This form of ownership is where property is owned by two persons. When one person dies, the ownership passes to the survivor by operation of law. This means that these assets do not need to be probated because the change of title to the survivor is automatic. The surviving owner needs to present a certified copy of the death certificate to have the name on the asset changed to them alone.

Tenants-In-Common

Tenants-in-common are similar to joint tenants, except that there is no right of survivorship. Upon the death of a tenant in common, his or her interest in the property passes through inheritance as directed in the owner's will or other estate planning documentation. This means, that an ownership interest as a tenant-in-common must be probated.

Pay-On-Death Designation

A pay-on-death designation mechanically works the same as joint tenants at the death of the owner of the account. When the owner dies, the designated payee automatically gets the account by operation of law. The account does not need to be probated. The major difference from a joint tenancy is that the designated beneficiary has no legal rights to the money until the death of the owner.

Trust Assets

Property that is held in a trust created by you will pass according to the terms of your trust upon your demise. Trust documents can be very flexible in achieving your desired wishes as long as there are no illegal provisions or provisions against public policy. For example, my revocable living trust contains a provision for the maintenance and care of my pets when I pass away.

What Is So Bad About Probate?

Nothing! As discussed above, probate is the legal process to change title to assets upon your death. However, like any legal process, it takes time and there are legal, filing, and accounting fees associated with this course of action. In addition, the process is public, and if you are a private person, you may want to take steps to avoid probate.

What Should I Do?

If you are contemplating how your property should be titled, the first thing you should do is consult a financial planner and/or an estate planning attorney. Although I have discussed the legal implications of various types of ownership, each type of ownership also has income, gift, and estate tax implications that need to be considered. We can work with your attorney to help you get the results you want.

Titling	Subject to probate	Property goes to:
In your name (will)	Yes	According to terms of will
In your name (no will)	Yes	According to laws of intestate succession
Joint Tenants	No	Surviving joint tenant
Tenants in Common	Yes	According to terms of will/laws of intestacy
Pay on death	No	Pay on death designee
Beneficiary designation	No (unless estate named)	Beneficiary named
Trust (revocable – included in gross estate)	No	According to terms of trust
Trust (irrevocable – not included in gross estate)	No	According to terms of trust

This article is part one of a series of estate planning articles. Part two in the series will cover the tax implications of forms of ownership. If you have questions about any information contained in this article, please contact Peri Ann Aptaker at 401-274-2001.