

Will Your Estate Be Distributed as Intended?

Often, a great deal of thought and work goes into estate planning documents. You need to consider all your assets, who to distribute them to, and the best way to accomplish your goals. However, your work isn't over once you've signed those documents. You need to make sure your assets are properly positioned to go to your intended heirs. Some problems to look out for include:

- **Your assets aren't titled properly to fund trusts.** A common estate planning strategy that preserves your estate tax exclusion is to set up a credit shelter or bypass trust. Assets up to the estate tax exclusion amount of up to \$5.49 million (up from \$5.45 million in 2016) are placed in trust. Your spouse can then use the income and even some of the principal, with the remaining assets distributed to your heirs after your spouse's death. To fund the trust, however, you need sufficient assets titled only in your name. Assets jointly owned with your spouse will typically pass directly to your spouse and cannot be placed in the trust. In some circumstances, your spouse may be able to disclaim his/her share of assets so they can go to the trust. However, you may want to split assets so that each of you individually own assets designated to go into the trust. Residents of community property states should review their state laws carefully, since they typically have more flexibility when using assets to fund trusts.
- **Beneficiary designations contradict your estate planning documents.** Assets like life insurance, annuities, 401(k) plans, and individual retirement accounts pass directly to named beneficiaries. Provisions in your will and other estate planning documents cannot change those designations. Thus, review all your beneficiaries, ensuring those designations are compatible with your estate plan. Also review contingent beneficiaries, in case a beneficiary dies before you. After significant changes in your life, such as a divorce, remarriage, spouse's death, or child's or grandchild's birth, review your designations again to see if changes are warranted.
- **Owning assets jointly with just one child.** Often, a widow or widower will add one child to bank accounts, brokerage accounts, deeds, and title, in an effort to make transfer of assets easier after death. The widow or widower expects the child to share the asset with his/her siblings. However, the asset is considered a gift to the one child. In order for the child to split the asset with his/her siblings, he/she will have to make gifts to those siblings, possibly raising gift tax implications. Instead, consider using a power of attorney so the one child can help with your financial affairs. Or, make a provision in your estate planning documents that adjusts distributions for any assets that pass to one heir through joint ownership.

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