Contacts

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When you are planning your estate, you should be aware of the way your assets - such as bank accounts and real property - are titled, and the specific beneficiaries of your accounts, pension plan, or 401k.

Bank Accounts. With regard to titling your bank accounts, a problem can arise when you title bank accounts as a matter of convenience, rather than executing a power of attorney. For example, if you put your child's name on a bank account so they can write checks on your behalf, when you pass away, your child will be considered to be a part owner of that account if there is an "and" or an "or" on the account and they will get the proceeds of that account, even if that was not what you intended. The better option would be to give that person a signature power or a specific power of attorney for that account.

Real Estate. Real Estate can be held in several different ways:

If you hold property as a Joint Tenant, the survivor will automatically become the owner of the entire property after the first person dies.

If property is held as Tenants in Common, then the property is passed to whomever is named in your will or by intestacy if you do not have a will.

If you hold a property with your spouse, it is presumed that you hold it as Tenants by the Entirety, which is the same as Joint Tenants with right of survivorship, unless you specifically title it as Tenants in Common.

If you retain a life estate in your property, you will have life time rights to the property while you are alive and the remaindermen (such as your children) are entitled to the property after you have passed away. As the life tenant, you still own a percentage of the property and if the house had to be sold, your percentage of the proceeds would be based upon your age and life expectancy and the applicable IRS rate for the month the property is sold.

Another option that can be used is to deed the entire property to your child or children and sign a lifetime lease. In that case, you still have life time rights to the property while you are alive but you no longer own a percentage of the property.

Pension Plans. You should be aware of the income tax consequences of the beneficiary of your pension plan or 401K. The beneficiary has to pay income tax when the money is withdrawn. If your spouse is the named beneficiary, he or she can roll it over until they are 70 ½ years old and then start drawing on their minium distributions. If the beneficiary is not your spouse, they need to begin to draw on it right away, but it can be done throughout their lives. If you name your testamentary trust as the beneficiary because you have younger children and do not want them to receive all of the money at age 18, and your will is not properly drafted, the trustee will have to take all of it out within five years and pay the income tax when the money is withdrawn. However, if the will is properly drafted, the beneficiary of the trust can gradually take out the money throughout their lifetime under the minimum distribution rules as if the beneficiary was specifically named, rather than the trust.