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## The Key to Your Estate Plan – Proper Asset Titling

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The key to making any estate plan successful is proper asset titling. This is true whether you have a fully funded customized revocable living trust or a simple will. The way you title your assets will have a major effect on your beneficiaries' inheritance. Titling assets strategically will help ensure that your wishes are followed, can speed the process of transferring assets to your beneficiaries and can keep your wishes and finances private.

We cannot overemphasize the importance of proper asset titling. Improper asset titling can have a dramatic effect on an individual's estate plan. This is best illustrated by looking at a fairly typical situation. Dave and Dana are a married couple in their early 50s. They have three children, Susie, Mary and Mike. Susie is 30 and a brain surgeon. Mary is 25, still looking for a job and a bit of a compulsive shopper. Mike is 16 and still in high school.

If Dave and Dana own all of their assets joint with rights of survivorship, after the first spouse passes away, all of the assets will go directly to the surviving spouse. If Dave and Dana each have a simple will which leaves all of their assets to the surviving spouse, then this asset titling makes sense. It accomplishes their goal of transferring their assets to the surviving spouse on the first death. As an added benefit,

because the assets are titled joint with rights of survivorship, Dave and Dana will avoid having to go through probate on the first death.

However, assume that Dave and Dana have a net worth of \$1 million. Dave and Dana wanted to minimize their state estate tax, so they executed a joint revocable living trust. Unfortunately, Dave and Dana did not retitle their assets in the name of their trust. Rather, they continued to own their assets joint with rights of survivorship. They figured it was not necessary to incur the cost of retitling their assets into the trust because they were the only beneficiaries during their lifetimes anyway.

The problem is that because the assets were owned joint with right of survivorship, they went outright to the surviving spouse at the first spouse's death. This will bypass the trust and its tax planning provisions. As a result, all of the tax benefits of doing the trust in the first place were lost. If Dave is in a car accident and passes away, all of his assets will go outright to Dana and his estate tax exemption will be lost. As a result, his family will end up paying more in estate tax on Dana's death than was necessary.

To further compound the problem of not funding the trust, Dana does not transfer the assets to the trust after Dave's death. If Dana had funded the trust during her lifetime, her

estate would not pass through probate. Because Dana did not fund the trust, it will be necessary for her family to probate the estate.

Assuming that Dana had a pour-over will, which transfers all of her assets that go through probate into the trust at her death, the cost – both in expense and time – of probate is entirely unnecessary. The family ended up in the same position it would have had Dana funded the trust after Dave’s death, but it needed to jump through the probate court hurdles – and pay the toll – in order to do so.

After Dave’s car accident, Dana needs some help managing her finances. Because Mary is still living at home, Dana adds Mary as a joint account holder on Dana’s saving and checking accounts. Dana added Mary as a matter of convenience, so that Mary could write the checks for the household bills.

As you can probably guess, there are a number of potential issues with this arrangement. As a joint owner of the account, Mary is free to drain the account to feed her shopping habit. Even if Mary did not drain the account herself, her creditors would be able to reach it.

To further complicate matters, when Dana passes away, instead of going through probate into the trust for the benefit of all three kids, the account would go outright to Mary. This is certainly not what Dana intended by adding Mary to the account, but it is the result.

Another similar situation is when parents add their children to the title of real estate. Before Dave passed away, he and Dana purchased a lake house. In order to avoid probate after they both pass away, they had the

deed made out to them and their children, joint with rights of survivorship.

This raises the same creditor problems as adding joint owners to other types of assets. Even if none of the children currently has any creditor problems, that does not mean they won’t ever have creditor problems in the future. For example, one of Susie’s patients could sue her for malpractice at any time. By putting Susie on the deed as a joint owner, the whole property could be at risk.

In addition to the creditor concerns that apply to all assets, real estate poses some unique issues. In Ohio, in order for a married person to sell real estate they own in their own name, their spouse needs to consent. Thus, if Dana decides to sell the house after Dave’s car accident, she will not only need the consent of all of her children, but also their spouses. While this may not be a problem if everyone gets along, do you really want to take that risk?

Another issue unique to real estate is that any of the joint owners could force the sale of the property through a partition action. Thus, even if all of the other joint owners want to keep the lake house, if they cannot afford to buy out the troublesome owner’s share, they will be forced to sell. If one of the joint owner’s goes bankrupt, the bankruptcy trustee could also force the sale of the property.

Even assuming that none of these issues comes up, the joint owners will need to work out among themselves how to pay the expenses of the property. While Dave and Dana are alive, this may not be a problem. But after they pass, their children will each be equally responsible the expenses of the property,



regardless of their respective use of the property.

There are also potentially adverse gift and income tax consequences to adding a joint owner other than a spouse onto real estate or really any type of asset.

As part of their estate plan, Dave and Dana purchase a second to die life insurance policy. They name their kids equally as the primary beneficiaries. This is a common distribution pattern, and it may work well in many circumstances.

However, because Mike is still a minor, Mary is not financially responsible, and Susie has a high-risk job, Dave and Dana wanted their children's inheritance to remain in the trust they created. Unfortunately, they did not communicate this desire to their life insurance agent. By not naming their trust as the beneficiary, their life insurance proceeds will pass directly to their kids despite their intentions.

Perhaps one of the most complicated areas of asset titling has to do with retirement accounts. Not only will the titling and beneficiary designations of retirement accounts affect estate taxes, it will also have an important impact on income taxes.

If Dave and Dana fail to name a beneficiary of their retirement accounts, or name their estate as the beneficiary, important income tax benefits will be lost. If Dave and Dana name their trust as a beneficiary, in order to take advantage of the trusts estate tax planning provisions, the beneficial income tax treatment of IRAs may be lost or lessened if the trust does not meet certain IRS requirements.

This story is not an actual case, but situations like this, and even worse, happen all too often. This article just touches on some of the issues that we see every day. Asset titling is the most overlooked aspect of estate planning. The key to making an estate plan work is proper asset titling.

It is absolutely essential to coordinate the way you title your assets with the type of estate plan you have. It may seem simple, but mistakes can result in serious legal or tax consequences. Whether you have a simple will or a complicated customized trust, we encourage you to review your asset titling to be sure that it works with your estate plan, and not against it.

If you would like assistance titling your assets, or more information regarding asset titling, please feel free to contact our office.

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