

TRUST CONNECTION

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MCF Private Trust

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on Trust News
and Information

Our trust services enable us to seamlessly serve you and your family in a manner that is both cost-effective and efficient. We are able to serve as an investment advisor to your trust without sacrificing protection for trust beneficiaries. MCF Private Trust is a Trust Representative Office of National Advisors Trust Company, a national independent advisor-owned trust company.

The Number One Mistake People Make in Estate Plans

Estate planning is complex, but the most common mistake is quite simple – coordinating the title of assets with the plan. And estate planners agree this is a consistent theme. It can be disturbing how often the assets do not coordinate with the plan, sometimes to unsettling results.

This is perhaps also a contributing reason that many estate planning attorneys spend as much or more time handling family settlements after death than actually planning. With all the complexities of property law, tax law combined with the fiduciary responsibilities and choice of executor, trustee, and investment management, having the root of the plan disconnected by a gap in titling is unfortunate.

Example: Nancy writes a will. She thoughtfully designs who gets what and has her attorney draft the document. Her estate is to pass equally to her three daughters. Everything is in place and she reviews it every year. After her husband died she was concerned that someone be able to access her money, should she be unable. She adds one of her responsible daughters who lives nearby to the accounts as a joint owner so she could write a check or access funds if needed. When Nancy dies, all her liquid accounts go to one daughter rather than equally as stated in her will. Why? Because joint accounts do not pass by the terms of the will.

For estate planners, there are three distinct periods in a person's life: active life, incapacity, and death. One's account title should coordinate with his/her plan documents in each of these three periods, yet most people set it up with only the first period – active life – in mind. That is, who has control and access to the funds

right now. This focus on present control is sometimes at odds with the later periods. The good news is the problem is easily corrected and professionals should include title of property in their client reviews to ensure it remains correct.

Estate planning implications in the forms of ownership are often overlooked. Understand that not all forms of ownership are available in every state. This is not intended to be an in-depth review, rather a summary of key estate planning implications of each form of ownership.

Individual Ownership – When only one is on the account the account passes by the terms of the will, passing through probate.

Joint Tenancy – Multiple people are named as joint tenants; there is a “right of survivorship,” which causes the property to pass directly to the surviving joint tenant(s). It does not pass by terms of the will nor the trust, avoiding probate.

Tenancy by the Entirety – This is basically joint tenancy between spouses. Again, property owned as such passes directly to the surviving spouse, bypassing the terms of the will and trust and probate.

Tenants in Common – This also involves multiple owners and is therefore sometimes confused with joint tenancy, creating misnomers like “joint tenancy in common.” There is no such thing, but some state courts have had to rule on the issue when assets were mis-titled as such. Tenancy in common creates a fractional share ownership that does not have rights of survivorship and thus passes as the decedent's portion is owned, generally in his/her individual name, and thus under the terms of the will and probate.

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Community Property – This is basically tenants in common between spouses. For the states where community property is the law of the land, community property is imposed, whether titled as such or not, on any property earned during the marriage. It sometimes causes confusion or dispute when pre-marital and post-marital property is mixed. The decedent's portion of community property passes in accordance with his/her will. To attempt to avoid probate on community property, some states have created community property with rights of survivorship, to pass directly to the surviving spouse.

Beneficiary Designation – Some assets pass by contact in which they are permitted to name a beneficiary. Examples include life insurance, annuities, retirement plans and IRAs, and "payable on death" forms of ownership. When a valid beneficiary is named, the property passes directly, superseding the will and trust and avoiding probate.

Trust Property – Property held in a trust passes by the terms of the trust, again bypassing the will and probate. Creating a trust is not enough – the assets need to be re-titled in the name of the trust. Community property can be held in a trust and still retain its character as community property.

Other forms of title include ownership by a corporation or partnership, but that is not what is important. What is important is how the shares of the corporation or interests in the partnership are titled.

Another misunderstood feature of titling is whether assets pass through probate. Probate means "proof" and is the process of proving the wishes of the decedent by validating his/her will. Many think probate applies only to intestate estates, where there is no valid will, but in fact everything passing under the terms of the will goes through probate.



Aligning the forms of ownership with the estate plan and keeping it properly aligned is crucial to ensuring that your wishes are carried out as intended at death. Check with your advisors on whether reviewing forms of property ownership and their alignment with the plan is part of their annual review process, and avoid this most common mistake in estate planning.

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