August
2009
Volume 1
Issue 1

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Trusts and Estates Newsletter

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Unraveling the World of Joint Accounts and Beneficairy Designations

by Jonathan C. Kinney, Esquire and Ela Kapusta

As the population ages, the need for an array of estate planning tools and techniques is clearer than ever. While sophisticated clients are seeking out creative solutions to business succession, family partnerships and no contest clauses, the simple tools, such as joint ownership of accounts and payable on death and transferrable on death designations are often forgotten or misunderstood. This misunderstanding can lead to unintended consequences and a great deal of aggravation in a family situation.

Take for example, John Doe, 75, who has a number of accounts with credit unions, banks and other financial institutions. He is healthy and competent and does not yet feel ready to relinquish complete control over his financial affairs to his oldest son, who is an accountant and would be a natural choice for this job. He does want, however, to start taking some steps in this direction, because it would be convenient for his son to pay some of his bills as he ages. Overall, however, it is John's intention to distribute his estate equally among his five children and he has executed a will to that effect.

John embarks on a 'do-it-yourself' estate planning tour of the financial institutions where he holds accounts. He asks each institution to add his son to his account. Does he mean he wants to name his son as a joint account holder? Or does he merely wish to give his son a power of attorney for the account? Why does this matter? Many credit unions and banks will not ask these questions if faced with someone who seems to know what they want. In the absence of further instructions, the bank may simply add John's son to the account as a joint owner. Now John has a joint account

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with his son, which means the funds in that account will automatically pass to his son upon his death. The result is that John's eldest son may receive a larger share of the estate than his siblings. Estate planning attorneys around the country are finding that clients who maintain an account with one or more of their children do so simply as a matter of convenience and that they believe that the funds in that account will be subject to the distribution provisions contained in their estate planning documents. The management convenience is something that can easily be achieved by either granting a limited power of attorney over the specific account or executing the bank's power of attorney form for that account only.

Similarly, beneficiary designations on bank accounts are very important and often overlooked tools in estate planning. These tools are vital in removing these assets from an estate upon the death of the owner. There are two kinds of beneficiary designation, which apply to different assets.

The first is a payable on death (POD) bank account, a regular account which passes to the designated individual or individuals upon the death of the primary owner. It is simple to put in place, as all that is involved is the completion of the bank's form to make the beneficiary designation. While the primary owner is alive, the account beneficiary has no right to the funds or ownership in the account. This tool also provides the flexibility to a primary account owner who can change his or her mind simply by naming a new beneficiary on a new bank form. Upon death, the account is automatically transferred to the named beneficiary outside of probate.

The second is a transfer-on-death registration (TOD), which, like a POD bank account, allows an individual to designate a beneficiary for stocks, bonds, and mutual funds. As with the POD bank account, the TOD beneficiary has no ownership interest in the account while the primary account holder is alive. Upon death the assets are transferred immediately to the TOD beneficiary. Most states offer TOD registration as a result of the adoption of the Uniform Transfer-on-Death Securities Registration Act. From a practical perspective, however, brokers may not necessarily offer this, so it is worth asking them about this form of beneficiary designation.

A few other points deserve mention: making a beneficiary designation has no effect on the rights of creditors or the Internal Revenue Service against the primary account holder since the beneficiary only has a prospective interest in the account. This means that the primary account holder is protected against any claims against the beneficiary.

POD accounts offer an additional unexpected benefit. They allow for more coverage under the Federal Deposit Insurance Corporation (FDIC) insurance program for bank accounts than an individual account does. A standard bank account owned by an individual is currently insured up to $250,000.00. By making a POD beneficiary designation, coverage is then also provided for each named beneficiary up to $250,000.00, subject to certain rules discussed below. Firstly, the beneficiary must be a person, charity or non-profit organization. Secondly, the account must be titled in such a way as to indicate there is a POD

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beneficiary designation on file. Thirdly, each beneficiary's name must be indicated in the bank's records. To ensure larger amounts qualify for FDIC insurance or for more information on this issue, either contact one of our estate planning attorneys at (703) 525-4000 or visit the FDIC website at www.fdic.gov and click on the Deposit Insurance page.

You may Need a Special Needs Trust
by Lori K. Murphy, Esquire

Does one of your children have a mental or physical disability? Has your child received public benefits in the form of Medicaid, Social Security or Supplemental Security Income (or could receive public assistance in the future)? Do you want to ensure that this child receives some of the benefits of your hard work and savings?

If so, you may consider establishing a special needs trust for your child. The goal of a special needs trust, often referred to as a supplemental trust, is to provide for the care and support of the beneficiary without impacting that beneficiary's receipt of public benefits. This is a key consideration, since a beneficiary may be ineligible for public assistance based on need if the beneficiary's assets exceed $2,000.

In a special needs trust, a named trustee is directed to provide for the needs of the special needs beneficiary without reducing public assistance. Specifically, a trustee is instructed to limit payments for items that are typically covered by public assistance. Instead, a trustee is instructed (and has the power) to pay for the beneficiary's expenses such as educational training programs, periodic evaluations, personal coaches, and private caretakers. For example, a child with autism may be able to function in the society quite well if he receives personal coaching and special occupational opportunities. Further, since special needs beneficiaries often need to be accompanied on vacations or trips, a trustee is able to pay for the companion as well.

These are considerations that are not addressed by a simple Will or a regular Trust. Since there are different types of special needs trusts, it is important to speak with your attorney about options appropriate for your personal family situation.

Legislative Update
by Jennifer Lee, Esquire

Of note in the 2009 Session, the Virginia General Assembly has enacted the following legislation in the wills, trusts and estates area:

SB 806 was approved to amend and reenact Va. Code § 64.1-130, which relates to a nonresident decedent's property that is located in Virginia. The new legislation provides that a transfer of a nonresident decedent's stocks, bonds, securities, money or tangible personal property that is located within the Commonwealth may comply with either the law of Virginia, or the comparable law of the state in which the nonresident decedent was domiciled.

SB 907 was approved to amend and reenact Va. Code § 64.1-57.3. The bill gives personal representatives and trustees the power to donate a conservation easement (pursuant to the

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an open-space easement (pursuant to the Open-Space Land Act), on any real property of a decedent or settlor, in order to obtain the benefit of an estate tax exclusion allowed under §2031(c) of the Internal Revenue Code. There is a proviso, however, that the written consent of all heirs, beneficiaries, or devisees whose interests are affected by the grant of such an easement be obtained.

HB 1944 amends Va. Code § 64.1 - 5.1 to provide that the determination of a parent-child relationship for succession purposes under Title 64.1, as to childern born out of wedlock, applies to intestate succession of real property, and not just personal property.

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