

BEST LAID PLANS

Whenever we work with a family on an estate after death, it is an opportunity to watch the estate plan in action. All of the decisions that were made and tools that were put in place begin to work in concert to realize the deceased's priorities and goals.

Unfortunately, the end result is not always perfect. Most issues arise when documents like a Will or Revocable Trust become static documents - disconnected from the natural changes and developments in your life. Whenever the documents lose their connection with you and your situation, things tend not to go as planned.

We see some common causes for these issues. The good news is that there are simple ways to overcome each of these challenges.

1. New Documents.

The Challenge: After your Will or Trust is signed there are many opportunities for you to sign new documents that can change how your estate is distributed at death. Putting Payable on Death ("P.O.D.") designations on bank accounts or C.D.s is just like writing another Will. The beneficiary designations on life insurance policies, IRAs, 401(k) accounts and other retirement plans also overrule whatever you put in your Will or Revocable Trust. Switching to joint ownership of bank accounts or other assets will determine who inherits the account at death, regardless of what it says in your Will or Revocable Trust.

The Solution. P.O.D.s, beneficiary designations and joint ownership cause the most trouble when they are out of sight. Unfortunately, all of these tools have a unique talent for hiding and slipping under the radar. To minimize your risk, simply insist that you receive a copy of any documents involved with payable on death designations, beneficiary designations, or ownership of your accounts. Then, remember to treat these documents with the same care and respect as you give your Will or Revocable

Trust. File them in the same place that you keep your estate planning documents. Include the information on your financial statements and lists of assets. If you keep these beneficiary designations out in the open they will not do the same kind of damage to your plan as when they are hidden.

2. New Assets.

The Challenge: When we work with clients on their planning, we have all of a client's assets in front of us. Decisions are made, questions are answered and the plan is set up with those assets in mind. Of course, life goes on after the Will or Revocable Trust is signed and we know that things will change. You may sell your house and buy a new one. You will save and invest money, open new investment accounts and buy new C.D.s. Not every transaction will create a problem. However, in some cases, new assets create an opportunity for confusion to creep into a plan.

It is important to know that many plans are flexible enough to handle changes in assets. Any plan that uses a Will to distribute assets can adjust to new real estate, investments, C.D.s etc. (see the discussion regarding P.O.D.

arrangements above). If the plan for a married couple uses a Revocable Trust, the plan documents that Fitzgerald Law Office prepares include a Marital Property Agreement that can handle new assets and investments **provided that they are located in the state of Wisconsin.** It is plans for single individuals who use a Revocable Trust that are the most at risk. This includes the surviving spouse where the plan is based on an earlier Joint Revocable Trust. These single people need to exercise care when purchasing new assets and creating new investments.



Solution. First, you should take stock of your situation and determine if you fit into the category of people who need to be vigilant. If you are a single person or surviving spouse using a Revocable Trust or a married couple with new assets located outside of Wisconsin, your risks can

be greatly reduced by keeping track of your documents. Any deeds or paperwork regarding new accounts should be saved and treated as important documents. You should also keep a complete list of your assets that shows how each asset and account is owned, the asset's



value, and any beneficiary designations. You should keep the list with your Will or Revocable Trust so that they can be reviewed and considered whenever you look at your plan documents. Again, if you keep these documents front and center with your other estate planning documents, they will not be the source of unwelcome surprises.

3. New Ideas.

The Challenge: It is common for people to think of new goals, different arrangements for beneficiaries and changes to their plans after they sign their Will or

Revocable Trust. Often these new ideas are shared with one family member, who promises to make sure that these arrangements are carried out. Unfortunately, this puts a lot of pressure on the family member who is “keeper of the plan” and opens the door to confusion and misunderstandings.

The Solution: The best way to avoid problems is to make sure that your Will or Revocable Trust is up-to-date. Your family will be best served if the written word matches your intentions. It is often very simple to make these changes. It also provides an opportunity to look over the information regarding your newly acquired assets or new beneficiary designations (see the discussion above). An ounce of prevention is worth more than a pound of cure. Making a “simple” change to your will can be an opportunity to make sure that your entire plan is on track.



4. New Faces.

The Challenge: When most clients set up their Will or Revocable Trust, the meetings and discussions do not include their children or other people who might be named as power of attorney. Yet, there will come a time when these key people will be asked to step forward and take on important responsibilities as executor of the estate, trustee of a Revocable Trust or agent under a financial or health care power of attorney. These people were chosen because they have the talents and abilities to do the job. Still, they have a lot of catching up to do. They need to learn about your intentions, understand the tools that you put in place and figure out how all of the various pieces of the puzzle fit together.

The Solution: Each family has a different style. Not everyone is comfortable talking about their estate plan with family members. In some situations it may not be a good idea. However, in some cases the transition can be eased for decision makers like the executor of the estate or power of attorney. You can have a conversation where the person who will have the job gets an opportunity to talk about it with you and ask questions that can guide them when their time comes.

In many cases you may find that your children do not understand as much as you do about Revocable Trusts, how probate works, or other things that influenced your planning. The children may feel much more comfortable with their roles if they have a chance to talk these things through.

People have many good reasons for not talking to their future executors or powers of attorney. However, it can be a good exercise to relieve the stress on other family members and provide for a smooth transition. Sometimes it is the kind of conversation that you want your attorney participate in to answer questions and fill in some of the blanks.

