

Spring 2019

# Estate Planning newsletter

Expertise  
Common Sense  
Integrity  
Fairness  
Hard Work

shared values. firm results.

## INSIDE THIS ISSUE



pg. 1

Don't Let Your  
Beneficiary Designations  
Torpedo Your Estate Plan



pg. 4

Estate Planning for  
Retirement Benefits



pg. 6

Your Estate Planning  
Timeline

## DON'T LET YOUR BENEFICIARY DESIGNATIONS TORPEDO YOUR ESTATE PLAN

**T**raditionally when we think of estate planning, we think of transferring assets upon death pursuant to wishes conveyed as part of a Last Will and Testament or a Revocable Trust. Assets held in a revocable trust will pass directly to beneficiaries named in the trust agreement without the need for probate. Some assets held in your individual name will be subject to probate and will pass according to your Last Will and Testament or by law if you do not have a Will. However, many people hold a significant portion of their wealth in assets which do not pass through the probate system – appropriately called “non-probate” assets. It is therefore important to know what those non-probate assets are and how to manage those assets so that you can be sure they are conveyed upon your death in a manner that is consistent with the rest of your estate plan.

continued on pg 2



# DON'T LET YOUR BENEFICIARY DESIGNATIONS TORPEDO YOUR ESTATE PLAN

continued from pg 1



**By Sara N. Wilson**  
763-225-6000  
swilson@gislason.com



**By Abigail A. Pettit**  
763-225-6000  
apettit@gislason.com

## 1. What Are Non-Probate Assets?

Non-probate assets include real or personal property owned jointly with another person or personal property that is designated by contract to go to a designated beneficiary upon the owner's death. Examples of non-probate assets include real property owned as joint tenants, jointly held bank or brokerage accounts, payable-on-death or transfer-on-death accounts, retirement accounts (e.g. IRAs, Roth IRAs, 401(k)s, 403(b)s and life insurance death benefits, residual value of annuities, and pension benefits with a designated beneficiary. A beneficiary designation is specific to an individual asset, and is not affected by how you choose to distribute your property in any other testamentary document, such as a will or a trust.

## 2. List both Primary and Contingent Beneficiaries.

For many non-probate assets, upon your death the asset will be transferred either to your joint tenant or your designated primary beneficiary, who will then become the owner of the asset. If you hold an asset in joint tenancy, then upon your death title to that asset will pass outside of probate to the surviving owner(s). If you hold an asset with a beneficiary designation, the asset will be distributed to your named primary beneficiary upon your death. If that primary beneficiary predeceases you, the asset will instead be transferred to your contingent beneficiary. However, if you have not listed either a primary or a contingent beneficiary the non-probate asset will likely be considered a probate asset. In many instances, a retirement account may have a "default" beneficiary if none is named, or if your beneficiary designations otherwise fail. The default is almost always the surviving spouse or your estate. Distributing a large retirement account, for example, directly to your estate, can result in large tax consequences, which would otherwise be avoided through the proper use of beneficiary designations. If the asset and/or the value of your estate as a whole is large enough, probate will then be required.



### 3. Be Certain to Update Beneficiary Designations.

Often we either forget who we may have named as a beneficiary on a non-probate asset, or fail to review beneficiary designations after certain life changes. If you do not ensure you have properly designated beneficiaries, you may inadvertently leave the asset to someone unintended or inadvertently create the need for probate. Review beneficiary designations often and certainly upon such life changes as divorce, death of a designated beneficiary and birth of a child or grandchild.

### 4. Minors and Individuals with Special Needs.

You need to think about the situation of your beneficiary. For instance, if you name a minor child as a direct beneficiary of a non-probate asset, the proceeds will likely be paid directly to that child when they turn 18. Providing an 18 year old with immediate access to a large sum of money may not be in their best interest. Therefore, if you have minor children and no living trust, it may be better to name a testamentary trust designated in your will as your beneficiary. Likewise if you name an individual who is receiving a governmental benefit based on a disability as a direct beneficiary, you could unintentionally disqualify that individual from receiving

their necessary governmental benefits. You are still able to provide an inheritance for an individual receiving this type of assistance by creating a special needs or supplemental needs trust within your will or revocable trust.

### 5. Include Beneficiary Designations as Part of your Overall Estate Planning.

Assets not formally transferred to the trustee of a revocable trust will probably not be considered part of the trust and may still be subject to probate upon the grantor's death. Likewise, non-probate assets that either do not have a beneficiary listed or do not have a proper beneficiary designation may mean that the asset does not go to the person you would like or ends up subject to probate. Finally, an outdated beneficiary designation could cause just as many problems as no beneficiary designation, with a significant asset bypassing your preferred heirs because you haven't changed your designations in accordance with your life changes and the rest of your estate plan. You should simultaneously review your current estate plan alongside the beneficiary designations of your non-probate assets to ensure your estate plan goals are met. ■