

Informal Procedures – When No Court Proceeding is Needed

As mentioned in the last article, there are many ways to pass ownership of property without a will and without probate. In fact the Will will not impact these arrangements. In all matters, however, complete information on all property belonging to the deceased should be collected. Here are a few of the more common Washington arrangements.

Community Property Agreements

A community property agreement is a written document signed by a married couple which usually converts all of their property into community property, and upon the death of one of the spouses transfers legal ownership automatically to the surviving spouse. To complete the automatic transfer of ownership, the surviving spouse has to record the original community property agreement and the death certificate for banks, title insurance companies, and other people who need to know about ownership of those assets.

Revocable Living Trusts

The revocable living trust is an increasingly popular way to avoid probate. This is usually a long document that provides both for management of property during a lifetime and for management and passing of property after death. If the deceased has signed a revocable living trust before death, most of the property will be registered in the trust's name; for instance, "John Smith, Trustee of the Smith Family Trust Dated January 1, 1990."

This method of transferring legal ownership eliminates the need for probate, but it also prevents the trust beneficiaries from using some helpful probate procedures. If questions about the trust come up, however, court supervision is available upon request.

It is important for a lawyer to review the will, the revocable living trust, and the property registered to the trust after death. Tax planning is often needed and the trustee may have to file tax returns, such as the federal estate tax return.

Joint Ownership with Right of Survivorship

Joint tenancy is a common way to transfer legal ownership at death – that is, joint ownership of property with an automatic right of survivorship in the other joint owner or owners. Bank accounts, investments, and real estate can be transferred in this way. The surviving owner’s name will be listed on the account. To demonstrate the transfer of legal ownership to the surviving owner, all the surviving owner needs to do is obtain a certified copy of the death certificate. If a surviving owner would like to show that the deceased owner no longer has an interest in real estate, the surviving owner can record an affidavit to that effect, attaching a copy of the death certificate.

For investment securities and bank accounts, the financial institution must be provided a certified copy of the death certificate in order to transfer the account to the surviving owner or owners. The financial institution may wish to have the surviving owner provide an affidavit, stating that the deceased lived in Washington and that any estate taxes will be paid.

Pay on Death and Transfer on Death for Accounts and Securities

Bank accounts, brokerage accounts, and investment securities can be held in a similar way, under payable on death (POD) or transfer on death

(TOD) registrations. The only difference between this type of ownership and joint ownership is that the person who owns the property after death has no ownership prior to death. To reregister such property, a certified copy of the death certificate and the type of affidavit described above are necessary.

Life Insurance

Life insurance is another popular non-probate asset which is discussed in detail elsewhere. The beneficiary should immediately contact the life insurance agent or the insurance company itself, and obtain the necessary forms.

Pension and Other Tax-qualified Plan Accounts, IRA's and Annuities

Finally, pension and profit sharing plan accounts (401(k) plan accounts, individual retirement accounts and annuities) usually pass under a beneficiary designation similar to that used for life insurance. The deceased's surviving spouse probably is entitled to receive an annuity or other distribution of the plan, unless that spouse has given up the right to receive the distribution. Filling out the forms to receive such a qualified plan benefit, or to receive an individual retirement account or other similar account, is fairly easy. But watch out: There are a number of complicated income tax problems that can occur depending on how benefits are paid, and the beneficiary should be sure to consult a tax advisor before applying for distributions.