Avoiding lurking litigation with proper estate planning

By Anna M. Cashman and Tiffany R. Gorton

Many trust and estate disputes occur simply because someone failed to properly plan for their demise or incapacity. Oftentimes proper estate planning can easily eliminate needless litigation.

Coordinating your beneficiary designations with your estate plan ensures that assets such as life insurance, retirement plans, bank accounts and other financial assets pass to the intended recipient. Assets that pass by beneficiary designation are contracts between you and the retirement plan custodian or life insurance company and will pass directly to the named beneficiary, regardless of what your will says.

One of the most frequent problems relates to accounts held in "joint tenancy with right of survivorship." Many people do not realize that listing a joint tenant with right of survivorship on their bank account means that person is now a joint owner of that account and when the original account owner dies, the person listed as joint tenant is presumed to be entitled to the balance of the account. For example, your carefully crafted estate plan that names a trust for the benefit of your spouse could be inadvertently thwarted if all of your assets are held in a bank account with your children from a prior marriage as joint tenants with right of survivorship. In that case, your assets would pass to your children and nothing would pass to the trust created for your spouse.

This accidental disinheritance is often found when someone adds a child to his or her bank account. Joint tenancy with right of survivorship is the default account titling for many banks for accounts that are owned by two or more people. In fact, some institutions advise that to prevent the account from being frozen upon death, it is preferable to add a joint "owner," instead of just an authorized signor. In a situation where one child is helping to pay the bills, there may be a dispute over the intent of adding the child as a joint owner to the account. You should be clear, in writings or other asset statements, whether the addition of a child to the bank account was for convenience only, or if the intent was truly to make a gift to the child of the remainder of the account at death, to the exclusion of other children or beneficiaries.

Issues can also arise if you are married but have children from a prior relationship and you do not execute estate planning documents or you plan as if the family is not blended. If you die without an estate plan, the laws of Washington control how property is distributed. Without a will, if you leave behind a spouse and children from a prior relationship, the surviving spouse is entitled to all of the community property and one-half of your separate property, leaving your children with only half of your separate property.

Alternatively, relying on a plan in which the new spouse receives everything outright under the terms of the will may significantly reduce or eliminate any inheritance received by your children from a prior marriage. The surviving spouse now owns all of the property and can change his or her will at any time to exclude your children from his or her plan. Including relatively simple trust language in your will allows you to provide for your spouse as well as for your own children.

In addition to proper estate planning, communication plays a vital role in avoiding estate disputes. Descendants may have unrealistic expectations about how much they will receive or be disappointed by not getting what they feel they are entitled to receive. If you are intent on disinheriting a child or other close friend or relative, let your intentions be known as to why you are not leaving him or her any assets. Thinking, "they know what they did," will not stop an upset heir from initiating litigation to recover what he or she believes is his or her fair share of the estate. A simple explanation in your will can answer a lot of questions. Such an explanation could be, "due to the numerous gifts I made to Joey during my lifetime, I leave nothing to Joey under my will." Or, a detailed letter that is signed and dated by you and kept with your will adds certainty to the question of your intent after you have passed.

Planning ahead and being clear on your intentions will go a long ways to keeping your estate out of an extended court fight once you are gone.

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