

# OWNERSHIP OF PROPERTY

## BENEFICIARY DESIGNATIONS

### AND OTHER NON-TESTAMENTARY TRANSFERS

A lengthy title. Perhaps this section is better described as "The best laid plans of mice and men oft go astray." Property which passes as you provide in your Will, is property in which you have an ownership interest which you did not dispose of by contract during your lifetime. That sounds like you entered into an agreement with someone and agreed to give them your property on your death. Possible, but not probable. Also that type of contract is not the contract disposition with which I am concerned.

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More likely you entered into an agreement with someone holding your property and they agreed to distribute your property to someone else on your death. The most common example is a life insurance policy. When you purchase a life insurance policy you name a person as the beneficiary of the policy. The beneficiary is the person who will receive the proceeds on your death. Another increasingly common contractual disposition is bank and brokerage accounts which are held as joint tenants with right of survivorship.

These contractual dispositions can sneak up on you, are even insidious. Let's assume that you and your spouse have property valued at \$2 million. Your estate consists of a home with a net value of \$500,000 and \$1.5 million in marketable securities. You go to an attorney and set up an estate plan. You create a Bypass Trust (discussed in an earlier chapter) so that all taxes will be eliminated on the death of the survivor. You have just saved your children about \$435,000 in estate taxes. Even though your estate will probably appreciate substantially, the exemption is also increasing, so you feel you are covered. You relax. You have

taken the steps you necessary to preserve your estate for your children. But your brokerage account is held in your name and your spouse's name as joint tenants with right of survivorship. Any problems? Yes, all of the property in the brokerage account will automatically be distributed to the survivor upon your death. The distribution of your brokerage account will not be governed by your Will. You entered into a contract with the brokerage company in which the

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brokerage company agreed to distribute all of the property to the survivor upon either of your deaths. The result of this structure is that none of the brokerage accounts pass under your Will to the Bypass Trust. All of the brokerage accounts (and the income and appreciation on the brokerage accounts)

is included in your spouse's estate. The survivorship feature could cost your children over \$400,000 in estate taxes. And if your children are children from a prior marriage, the result is much worse. Then it is not taxes that your children will lose, but all of the property you intended to leave them other than the house.

When you realize how incredibly disadvantageous the survivorship accounts are, you may begin to wonder why they are so common. I certainly have. The box on an account application form indicating a survivorship account is to be created is frequently automatically checked by the bank or brokerage personnel when a joint account is open. I have never had a bank or brokerage company explain to the customer the impact of the survivorship designation.

*Always check the style on your bank accounts. You may have a survivorship account and not realize it.*

As I reflected on it I decided that in most cases, taxes are not an issue. For example in 1989 only 2% of the people dying had an estate over \$600,000. With these percentages it is clear that very few people are impacted by the tax consequences of the survivorship account. What about the transfer of all of ones wealth to second spouse not to children. With a divorce rate over 50%, this could become a major issue. Perhaps this aspect of the accounts will cause the financial institutions to be a little more cautious in "checking the box".

Life insurance is also paid to the beneficiary. The main difference with life insurance is that most people are aware

of that fact. Deciding who to name as the beneficiary on your insurance is generally a part of your planning. Retirement plans are also distributed according to a beneficiary designation. Since a number of factors impact retirement plans, retirement plans have their own chapter in this booklet. I refer you to the chapter titled "Retirement Plans" for a discussion of the considerations in naming a beneficiary on your retirement plan.

Another asset which is frequently owned and is governed by a beneficiary designation is a deferred annuity. Annuities come in a number of forms, but generally an annuity has an owner and an annuitant. The "beneficiary" receives any benefits remaining after the annuitant's death. Annuity payments under a deferred annuity are not immediately payable to the annuitant, but are deferred until a specified date, such as when the annuitant reaches the age of 65. The annuity does not pass under your Will. In addition, only an individual can be the beneficiary/annuitant. If you transfer the

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annuity to the trust, you will be changing the owner. A change of ownership will trigger all deferred income in the annuity. Annuities require special planning. In general an annuity can be a beneficial investment or retirement vehicle for an individual of limited means (or who is very concerned with asset protection). However, an annuity is not a good wealth transfer vehicle.

In summary, do not have any assets other than your household checking account held in a survivorship account. Check all of your beneficiary designations to coordinate them with your overall plan. Some assets such as annuities are not readily available to fund the Bypass Trust. Special planning is needed.