Estate Planning Insights

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Do you know the way to San Jose?

How To Get From Here To There. If you were planning to take a trip to San Jose, California, one thing you would need to do is figure out how to get there. You could drive all the way to San Jose in your car. Or you could fly there. Or you could take the bus. You could even hitchhike! And, although it's the least likely method, you could actually get there via boat. Obviously, each transportation method has *both* pros and cons.

The same is true of the "transfer methods" that apply upon your death. Each of the different methods for transferring your assets upon your death has *both* pros and cons. Anyone who leads you to believe that one transfer method is always the best method is misinformed (or has an agenda of his/her own). In making an appropriate recommendation to you regarding the transfer method(s) to use, your personal estate planning lawyer will take into account your particular assets, particular family situation and particular estate planning goals. Your lawyer has a *fiduciary duty* to make sure you understand both the pros and cons of each transfer method before you decide on the method or methods you will use.

Your Assets Must Go Somewhere When You Die. A deceased person cannot own anything. Therefore, when you die, your assets will be *transported* to a new owner or owners. You can distribute your assets upon your death to one or more individuals, trusts and charities. Try to imagine all of your assets being loaded onto a vehicle after you die, to be transported to the new owner or owners. That is what we are talking about. What kind of "vehicle" will you use to transport your assets when you die?

Most people end up using more than one transfer method. Primarily, that is because one category of assets–Beneficiary Designation Assets–can only be transferred per a beneficiary designation "form." All other assets can be transported using one or more of the other three transfer methods. The four transfer methods (vehicles) are:

1. Will (applies to the "probate assets").
2. Revocable Trust (a/k/a Living Trust) (applies to assets *already held in your revocable trust at the time of your death*).
3. Beneficiary Designation "Form" (applies to the four *true* "beneficiary designation assets").
4. Nonprobate Multi-Party Arrangements (can be used on accounts and assets *other than* beneficiary designation assets).

The first transfer method listed above is the only probate method. The other three transfer methods are non-probate methods. In reading this newsletter, try not to start with the "over-stated" idea that the probate transfer method is always "bad." That simply is not the case. Further, merely because the three non-probate transfer methods "avoid probate" does not make them equally good methods. There is no transfer method that is "all good" or "all bad"! Each transfer method has *both* pros and cons. Anyone who says otherwise is not speaking the whole truth!

More Information Regarding the Four Transfer Methods. Most people already understand what a Will is. Some advantages of using a Will as your primary estate planning vehicle include, but are not limited to, the following: (i) simplicity in understanding your estate plan (compared to, for example, a joint Revocable Trust); (ii) the ability to do "multi-level contingency planning," including having shares pass into trusts created in the Will for certain beneficiaries; (iii) the ability to do "tax planning" (to avoid estate taxes in one or more generations); (iv) having a designated person–the

Executor–be in charge of handling the post-death matters, including the payment of your "Debts, Taxes and Expenses" (discussed in more detail below); (v) no need to "pre-settle" your estate by re-titling all your assets while you are living (work that is often done in the case of a Revocable Trust); (vi) simplicity in transferring Texas real property upon your death; and (vii) no space or other limitations if you desire to create a highly customized estate plan. The biggest "disadvantage" of a Will is that there will be a probate process upon your death. Note, however, that even the much maligned probate process has both advantages and disadvantages.

More and more people in Texas are beginning to place their estate plan in a Revocable Trust (also referred to as a Living Trust). A Revocable Trust is an alternative vehicle to a Will. If you die with a "fully funded" Revocable Trust, your assets will be distributed without the need to go through probate. Pretty much everything you can do in a Will you can do in a Revocable Trust. Therefore, the Revocable Trust is *superior* to the other two non-probate transfer methods (i.e., methods #3 and #4 listed above). The Revocable Trust first developed in the states that have a "bad" probate process. As we have noted before, Texas has the simplest probate process of all 50 states. Therefore, we have less "compulsion" in Texas to use a Revocable Trust compared to residents living in the "bad" probate states. Of course, we especially use Revocable Trusts when clients living in Texas own real property in one of the "bad" probate states (to avoid a second–or, ancillary–probate process in that other state). There are also some asset management benefits of a Revocable Trust that are often "better" than what can be obtained with a Power of Attorney. If the settlor (creator) of the Revocable Trust loses his mental capacity, the successor Trustee of his Revocable Trust can easily take over the management of the assets held in the trust. Most "third parties" (such as banks, brokerage firms and title companies) prefer to deal with the Trustee of a Revocable Trust rather than with an agent named in a Power of Attorney. Two reasons may explain this. First, the Trustee of a Revocable Trust has *legal title* to the trust assets, while the agent under the Power of Attorney does not have legal title to the incapacitated person's assets. In addition, the trust instrument that creates the Revocable Trust describes the powers given to the Trustee in an extensive, clear way. The typical Power of Attorney used in Texas–the Statutory Durable Power of Attorney–is a very short document that merely lists the type of transactions covered by the Power of Attorney, without providing any real detail in the document itself.

Of course, if the trust settlor's goal in creating the Revocable Trust is to avoid probate upon his death, it is not sufficient merely to create the Revocable Trust. All "probate assets" owned by the settlor must be placed in the Revocable Trust *before* the settlor dies to avoid a probate process on the settlor's death. Thus, one of the disadvantages of the Revocable Trust (if probate avoidance is a goal) is the need to re-title all of the assets into the name of the trust before death. This can make the Revocable Trust a more time-consuming and expensive estate planning vehicle than a Will. In addition, in the case of a joint Revocable Trust created by married settlors, reading and understanding the trust instrument is harder than understanding the estate plan in a Will simply because the trust instrument covers the death of the first spouse and the death of the second spouse and no one knows which spouse will die first and which spouse will die second.

The four *true* "Beneficiary Designation Assets" are (i) life insurance (whether personally owned or provided by an employer/former employer); (ii) employee benefit plans of all types (such as profit-sharing plans and 401(k) plans); (iii) IRAs of all types; and (iv) annuities of all types. The only applicable transfer method for a "true" beneficiary designation asset is the beneficiary designation "form" (whether paper or electronic and whether submitted by the named owner of the asset or imposed as a default beneficiary designation due to failure of the named owner to have a valid beneficiary designation on file). You can list your Revocable Trust as the beneficiary of a beneficiary designation asset, but it is still the *beneficiary designation form* that transfers your beneficiary designation asset from you to your trust, for further distribution pursuant to the terms of your trust instrument.

Some (but not all) of the Beneficiary Designation Assets are deemed to be owned as community property if acquired while a married couple is living in Texas. This adds a complexity to disposing of Beneficiary Designation Assets that you do not have (for the most part) in the case of a Will or Revocable Trust. Both a Will and a Revocable Trust usually state that the deceased spouse only intends to dispose of what he owns, being his one-half (½) of the community property assets and his separate property assets, if any. On the other hand, when one spouse is named as the owner of a Beneficiary Designation Asset, even if that asset is community property under Texas law, that spouse has the sole power to name the beneficiary of that asset in the beneficiary designation form. If that spouse fails to take into account his spouse's community property interest in the asset and names someone other than his spouse as the beneficiary of more than 50% of the asset, that causes a serious gift tax problem, as well as other problems, for the surviving spouse. We discussed those issues in our two most recent prior newsletters dated May 31, 2019 and August 31, 2019, both titled, *Community Property Murdered by Federal Agents* (Special Editions 1 and 2), so we will not repeat that discussion in this newsletter. Just keep in mind that it is especially tricky for a married person in Texas to complete beneficiary designation forms. That is why attorneys who specialize in estate planning advise their clients regarding the appropriate beneficiary designations for all of their clients' Beneficiary Designation Assets.

The Nonprobate Multi-Party Arrangements (often referred to as the "poor man's Will") include, but are not limited to, the following: (i) accounts titled in the names of two or more persons that include a "right of survivorship," such as "Joint Tenants with Right of Survivorship" (often abbreviated JT TEN, JTWROS, JTw/ROS); (ii) accounts titled in the names of one or more persons that include a "Pay on Death" (POD) arrangement–i.e., certain persons are named as beneficiaries to receive the funds in the account on the death of the last titled owner; and (iii) accounts titled in the names of one or more persons that include a "Transfer on Death" (TOD) arrangement–i.e., certain persons are named as beneficiaries to receive the assets in the account on the death of the last titled owner. A TOD arrangement can also be used on real property. For awhile, Texas had a statutory "Transfer on Death Deed," but there were so many problems with that form that it was withdrawn.

This fourth category of transfer vehicles is the most risky and problematic. This category should usually be avoided by clients who have created an estate plan in their Will or Revocable Trust because assets that use this transfer method will *not* be part of the client's estate plan in her Will or Revocable Trust. This category is frequently used with sizeable after-tax investment accounts. The accounts and assets transferred by this vehicle (i) are not available to pay your "Debts, Taxes and Expenses," (ii) are not available to pay specific gifts made in your Will or Revocable Trust, and (ii) are not always distributed to the correct beneficiaries in the correct form.

Primary Goals of Estate Planning. In evaluating the four transfer methods, consider the primary goal in transferring your assets when you die: getting your assets to the appropriate beneficiary or beneficiaries in the appropriate form. Of course, you determine who those beneficiaries are and what each of them should receive. You also determine *how* they should receive it (i.e., the "form" of their inheritance).

What do we mean by the "form" of the inheritance? In most cases, this boils down to whether the beneficiary should receive his inheritance outright or in trust. Trusts should nearly always be used for beneficiaries who are "minors" (under age 18). In fact, most people use trusts for beneficiaries who are already over age 18 but still "too young" to receive a large amount at one time. Trusts should also be used for beneficiaries who are mentally incapacitated and for those who are disabled and receiving government benefits. Further, many people use trusts as recipients of inherited amounts even when the amounts are distributable to competent adult beneficiaries. The reasons for doing that include, but are not limited to, the following: (i) to protect the assets from being lost in a divorce or diverted to a new spouse or other non-family member; (ii) to protect the assets from being lost due to any other type of lawsuit (e.g., a personal injury or wrongful death lawsuit, a professional malpractice lawsuit, a business lawsuit); (iii) to prevent the assets from being subject to state and federal estate taxes (death taxes) when the beneficiary dies; and (iv) to provide more income tax options with respect to the income earned by the inherited assets each year. In the case of a competent adult beneficiary, the beneficiary can often serve as the Trustee of his own trust. So, to repeat, the primary consideration in creating an estate plan is making sure your assets end up with the correct beneficiaries in the correct form (i.e., either outright or in trust).

A second consideration in planning for what happens after you die is thinking through <u>the work that must be done</u> and <u>items that must be paid</u> when you die. No transfer method will eliminate certain work that must be done when you die. Thus, even if you avoid probate entirely, there is still work that must be done after you die. Who will do that work? What kind of legal authority will that person have to do that work? What funds will be available to that person to pay the items that must be paid after your death? The transfer method you choose can make it very difficult for the person you want to be in charge of the post-death work to do his or her job. In other words, there is more going on when you die than simply distributing your assets to the correct beneficiaries in the correct form. Someone must pay your "Debts, Taxes and Expenses," which includes, but is not limited to, debts (such as bills that come in after you die), funeral expenses, final income taxes, accounting fees to prepare your final income tax return, other administration expenses, including title transfer costs, asset maintenance charges (such as insurance and property taxes) to preserve your assets pending distribution of those assets to the beneficiaries, estate or trust income taxes, and, in some cases, federal estate taxes. Only two of the four transfer methods clearly provide for a "designated person" to be in charge of these post-death matters: a Will and a Revocable Trust. The other two transfer methods can cause serious problems in this regard. For one thing, if you exclusively use the other two transfer methods (i.e., transfer methods #3 and #4), no one will be officially in charge to handle the post-death work and pay the Debts, Taxes and Expenses. For another thing, in the case of assets transferred via transfer methods #3 and #4, the persons who are actually liable based on obligations imposed by state and federal law may not (i) be aware of their responsibilities under the law and (ii) be willing to contribute out of their respective shares of the inherited assets their respective portions of the Debts, Taxes and Expenses. That makes it very difficult for the "responsible" beneficiaries after you die. Further, keep in mind that when beneficiaries inherit assets pursuant to transfer methods #3 and #4, those assets become owned by the beneficiaries, personally, upon your death. In other words, those assets are not owned by your "estate" or by your "revocable trust" and, therefore, are not within the control of the Executor of your Estate or the successor Trustee of your Revocable Trust. Therefore, the assets inherited directly by beneficiaries pursuant to the third and fourth transfer methods are not available to the Executor or Trustee to pay Debts, Taxes and Expenses. The Executor or Trustee can sue the beneficiaries of those assets to obtain funds to pay your Debts, Taxes and Expenses, but having to file a lawsuit is not a good result. There are also gift tax issues when beneficiaries use personally inherited assets to pay your Debts, Taxes and Expenses.

A third consideration relating to the four transfer methods is "contingency planning." When constructing your estate plan, you must consider the possibility that one or more of your beneficiaries might predecease you. What do you want to happen to that predeceasing beneficiary's share? You must plan ahead for "foreseeable contingencies" because you might be mentally incapacitated when that contingency happens and not be able to make changes to your estate plan at that later time. The only two transfer methods that enable "sufficient contingency planning" are a Will and a Revocable Trust. While some contingency planning can be done with the other two transfer methods, the level of contingency planning that can be done with those transfer methods is more limited (and less desirable) than what can be done in a Will or Revocable (living) Trust. For example, if a child predeceases you, do you want that child's children to inherit their parent's share? That type of "contingent gift" is referred to as a "per stirpes" distribution. But what if the predeceasing child's children are minors or otherwise "too young" to receive their inheritance outright? In a Will or Revocable Trust you can provide that (i) the children of the predeceasing child (i.e., grandchildren) will inherit their parent's share and (ii) the share distributable to any grandchild who is under age X will be placed in a trust for him or her, with a responsible person you have appointed (the Trustee) making investment and distribution decisions on behalf of the grandchild until the grandchild reaches age X. In contrast, both beneficiary designation forms and the forms used to establish nonprobate multi-party arrangements are created by the particular financial institution that has custody of the particular asset. This means the insurance company in case of life insurance policies and annuities, the plan administrator in the case of employee benefit plans, the financial institution that serves as IRA custodian in the case of IRAs, and the financial institutions where bank, savings and loan, brokerage and investment accounts are held. Each of these companies creates its own "beneficiary designation form" and its own "account registration form" (i.e., the form that establishes how the account is registered and, hence, what happens to the account when you die). These companies are "all over the board" when it comes to the options allowed with their particular forms. Some companies allow their customers to use a "per stirpes" distribution for the assets/accounts subject to their forms, while other companies do not allow that. (Twenty years ago, very few companies allowed a "per stirpes" distribution and it is primarily due to "complaints" made by estate planning lawyers on behalf of their clients that many companies changed their policies and decided to allow a "per stirpes" distribution.) Even if a particular company allows a per stirpes distribution, many will not allow wording to be included in their beneficiary designation forms or account agreements to the effect that distributions to contingent beneficiaries, such as grandchildren, are subject to the trust provisions created for them in the customer's Will or Revocable Trust. In our newsletter dated April 30, 2018, titled, *TOD: Transfer on Death or Trample One's Disposition?*, we discussed actual problems that have arisen due to the use of TOD arrangements. We will not discuss those problems, again, in this newsletter, but we recommend reviewing the cases discussed in that newsletter for further examples of problems that can arise with the use of that transfer method. As a reminder, all prior newsletters are available on the firm's website: www.gerstnerlaw.com.

Pros and Cons of Probate. There is a lot of criticism of probate as a transfer method. First, people erroneously "lump together" everything that happens after someone dies and refer to it as *probate*. That is not correct. Probate is merely one part of the three-part probate process. We have discussed this many times before. *See* our newsletters dated July 31, 2004, *The Who, What, Where, When and **Why** of Probate*; October 31, 2004, *Middle Matters: It's Not Probate (And It's Not Fun)*; January 31, 2005, *Handling an Estate: The Final Phase*; and July 31, 2014, *How Assets Pass at Death Makes a Difference*. Even if probate is avoided, there is still work to be done when someone dies (and sometimes that work is *more complicated* when probate is avoided).

Second, people exaggerate the delay of probate. It is true that the probate assets are "frozen" until the Will is probated and the Court officially appoints the Executor. If one is motivated, this can happen within 3-4 weeks after the decedent's death. Of course, once the Executor is appointed, other work must be done and the Debts, Taxes and Expenses must be paid before the beneficiaries receive their shares. Theoretically, the successor Trustee of a Revocable Trust should be able to manage the trust assets immediately after the trust settlor's (creator's) death, although there is often some delay because of the updated paperwork required due to the change in Trustee and change in the trust's tax status. Even distribution of beneficiary designation assets and nonprobate multi-party accounts will be delayed to some extent due to paperwork required by the company administering the asset or account. Usually, a death certificate is needed and it can take a week or more to get that document.

What about the cost of probate? There is a huge difference in the cost of probate from state to state and also from attorney to attorney within a state. The post-death process is like a journey and it is the type of journey that is best undertaken with the help of a guide (because most lay people who serve as Executor do not know what they are required to do). Thus, the probate attorney serves as the Executor's guide. A good guide should provide significant value to the Executor, so that the Executor does everything that is required under the law and does not make mistakes that harm the beneficiaries.

In certain cases, the probate process is more efficient than other transfer methods. For example, probating a Will may be more efficient than using a Revocable Trust for transferring Texas real property at death. That is because a probated Will has the same effect as a recorded deed. Thus, the need to record numerous deeds to transfer title to real property is avoided. *See* enclosed chart for more information.

Finally, having a Will is superior to transfer methods #3 and #4 in the case of a *customized* estate plan and in terms of addressing various contingencies in advance and making sure beneficiaries whose shares are supposed to be held in trust end up in trust. There is plenty of space in a Will to do these things. It is usually not possible to handle these things to the same extent when using transfer methods #3 and #4. Also, as noted, if all assets are transferred using methods #3 and #4, no one is officially in charge of handling the post-death matters, including paying Debts, Taxes and Expenses. And even if one of the beneficiaries voluntarily assumes this responsibility, he or she will not have any "estate " or "trust" funds to pay the Debts, Taxes and Expenses. Thus, he or she may end up using personally inherited funds to pay those items, which can be considered a taxable gift by that beneficiary to the other beneficiaries.

WARNING: This chart is, to some extent, an over-simplification. That is because it is nearly impossible to capture all relevant issues in a summary chart. The purpose of this chart is to provide *general* information. Nothing in this chart should be deemed to be specific information applicable to you and your situation.

Transfer Method	Multi-Level Contingency Planning, including distributions to trusts for beneficiaries in each level?	Person Officially in Charge to Do Post-Death Work and Pay Debts, Taxes and Expenses?	Funds available to pay Debts, Taxes and Expenses and Specific Gifts per Estate Plan?	Assets part of (subject to) your particular Estate Plan in Will or Trust?	Efficiency with respect to transfer of Texas real property upon death?	Avoid Ancillary Probate with respect to Non-Texas real property upon death?	Provide inherited assets to beneficiaries fairly quickly?
Will	Yes	Yes	Yes	Yes	Yes[1]	No	No
Revocable Trust	Yes	Yes	Yes	Yes	Not so much[2]	Yes[3]	No
Beneficiary Designation Forms (Life Insurance, Employee Benefit Plans, IRAs and Annuities)	No[4]	No	No[5]	No[5]	N/A	N/A	Yes[7]
Nonprobate Multi-Party Arrangements (JTWROS, POD and TOD)	No[4]	No	No[5]	No[5]	Yes & No[6]	Yes & No[6]	Yes[7]

[1] A probated Will has the same legal effect as a recorded deed. A Will is basically like a deed of the property from the deceased person (decedent) to the new owner (i.e., the beneficiary) per the Will. Therefore, depending on the terms of the Will, when the decedent dies and his Will is probated in his county of residence, all real property owned in that county is transferred by the Will to the beneficiary or beneficiaries per the Will. A deed is not technically required when a Will is probated (although sometimes an Executor's Distribution Deed is used anyway, especially if distribution of the real property per the Will is not clear). Title to real property in other counties in Texas is transferred by recording a certified copy of the decedent's probated Will and the Order Admitting the Will to Probate in each other county in Texas where the decedent owned real property.

[2] Multiple deeds will often be required. Consider this case: On the first spouse's death, the entire estate passes outright to the surviving spouse; on the surviving spouse's death, the entire estate passes to the couple's "descendants, per stirpes." Deeds required (*if avoiding Texas probate is a goal*): (1) before the death of either spouse, married trust settlors convey the property by deed to their joint revocable trust; (2) on the death of the first spouse, the surviving spouse, as Trustee, conveys the property to himself/herself as the surviving spouse, outright and free of trust (the transfer is done this way to qualify for the marital deduction); (3) the surviving spouse then conveys the property back into the trust; (4) on the death of the surviving spouse, the successor Trustee of the trust conveys the property to the children, in equal shares (with a predeceasing child's share being conveyed to his or her children, in equal shares, subject to any applicable trust provisions per the trust instrument). NOTE: The applicable appraisal district matters are entirely separate from the legal title matters.

[3] Non-Texas real property, including mineral interests, must be placed in (i.e., titled or retitled into the name of) the Revocable Trust *before* death to avoid ancillary probate (i.e., an additional probate process in the state where the non-Texas real property is located). NOTE: If non-Texas real property is owned by a legal entity, such as an LLC, the decedent's interest in the LLC will be transferred pursuant to his Will and the Will will be probated in Texas if the decedent was a Texas resident, not in the state where the real property is located. (A membership interest in an LLC is considered "personal property," transferrable by Will in the decedent's state of domicile, and not real property, even if the LLC owns real property.) A revocable trust is often a simpler way to own non-Texas real property compared to an LLC because a revocable trust is a *grantor trust* while the grantor (trust creator) is living and, therefore, a separate income tax return is not required. But, in some cases, the LLC approach is better.

[4] Some (but not all) IRA custodians will allow their IRA customers to attach to their IRA beneficiary designation form an addendum containing detailed distribution provisions relating to the IRA. This will often solve the multi-level contingency problem and the problem of distributing particular beneficiaries' shares to trusts created for them in the IRA owner's Will or Revocable Trust; however, additional estate planning costs will be incurred because only a qualified attorney can prepare an appropriate addendum to the IRA beneficiary designation form that will be accepted by the IRA custodian. NOTE: Plan administrators of qualified employee benefit plans almost never accept addendums to the beneficiary designation form applicable to the qualified plan. Also, very few beneficiary designation forms for commercial annuities that we have seen to date appear to allow a *per stirpes* distribution and the few that allow a per stirpes distribution do not allow any of those distributions to be made subject to trust provisions in the annuity owner's Will or Revocable Trust. For TOD contingency problems, see our prior newsletter dated April 30, 2018, titled, *TOD: Transfer on Death or Trample One's Disposition?*

[5] Naming the "most responsible beneficiary" as the beneficiary of either a "beneficiary designation asset" or a "nonprobate multi-party arrangement" with the idea of that particular beneficiary paying your Debts, Taxes and Expenses does not solve the problem the right way. The IRS views that beneficiary as using his or her "personally owned funds" (i.e., the funds inherited on your death pursuant to these arrangements) to pay *your* Debts, Taxes and Expenses, which means the beneficiary is basically making a gift to the other beneficiaries of your estate. The gift may be large enough to constitute a *taxable gift* that must be reported in a federal gift tax return. Also, if the other beneficiaries do not willingly contribute out of their inherited assets their proportionate amount of your Debts, Taxes and Expenses, the "responsible beneficiary" who pays the entire amount will end up with a smaller inheritance compared to the other beneficiaries (due to using some of his/her inheritance to pay your Debts, Taxes and Expenses). In addition, assets distributed pursuant to these methods are not available to pay specific gifts you wish to make per your Will or Revocable Trust.

[6] With respect to real property, a <u>simple</u> Transfer on Death Deed *can* work; but if beneficiaries die "out of order," unintended results are likely (the property will not end up being owned by the correct beneficiaries in the correct shares). Also, if any interest in the real property is distributable to a beneficiary who is a minor, the minor's share will usually end up in a guardianship with this approach.

[7] A death certificate for the decedent and new account paperwork for the beneficiaries will usually be required to make the distribution. Thus, distribution of these assets to the beneficiaries is still not "immediate," but can occur relatively quickly if the required documents are obtained and submitted relatively quickly. However, if methods 3 and 4 are used for *all* assets, problems will likely arise in regard to (i) the post-death work that must be done (i.e., no one will be officially in charge), (ii) the payment of Debts, Taxes and Expenses, and (iii) the payment of specific gifts per your Will or Revocable Trust. NOTE: A big "controversy" at this time is whether a particular IRA custodian requires a charity named as a beneficiary of an IRA to open an inherited IRA before distribution of the charity's share of the IRA can be made to the charity. Charities object to opening an inherited IRA because of the "burden" that places on the charity and the "invasiveness" of the information required to open the account (often, personal information regarding the officers of the charity must be disclosed in the new account form). A charity simply wants to cash out its share of the IRA as quickly as possible. Charities are not going to maintain an inherited IRA.

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Conclusion. For people who are going to expend the time and effort to create an appropriate estate plan, considering all relevant matters, using a Will or a Revocable Trust is usually better than using Nonprobate Multi-Party Arrangements (transfer method #4). We are "stuck" with using beneficiary designation "forms" for Beneficiary Designation Assets (transfer method #3). There is no alternative transfer method for those particular assets. So, it is necessary to coordinate the disposition of the Beneficiary Designation Assets with the estate plan in the Will or Revocable Trust.

At the very least, before you use Nonprobate Multi-Party Arrangements, be sure you understand both the pros and cons of those arrangements. Don't assume that just because those arrangements "avoid probate," they are superior to having an estate plan in a Will. You may be causing problems by using this transfer method that you would otherwise avoid by having these assets be subject to your estate plan in your Will (we listed several of those "problem cases" in our TOD newsletter, cited earlier). If you really want to "avoid probate," use a Revocable Trust, rather than Nonprobate Multi-Party Arrangements, and fully fund the trust before you die. But understand exactly what probate in Texas entails. Do not confuse other legal matters that must be handled when a person dies with probate. Not everything that happens after death is "probate." Various legal matters must be handled after you die whether your estate goes through probate or not. Those matters are not avoided by using Nonprobate Multi-Party Arrangements and, in fact, handling those matters can be more complicated when those arrangements are used.

Contact us:

If you have any questions about the material in this publication, or if we can be of assistance to you or someone you know regarding estate planning or probate matters, feel free to contact us by phone, fax or traditional mail at the address and phone number shown above, or by email sent to:

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