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Estate planning is a topic shrouded in myth, misinformation and emotion. Though the details can get complicated depending on specific situations, there are basics that provide a foundation for good estate planning. This piece will outline:

- *The four main methods property is distributed upon an individual's death;*
 - *The important components for an estate plan; and*
 - *Why having a personalized estate plan is vital.*
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A common myth is that only rich and famous people need estate plans. Maybe it's the word 'estate' which conjures thoughts of mansions and castles and lots of land. In reality though, we all have possessions that will be left behind at death and this is the definition of estate that merits our attention. It is important to understand that **everyone has an estate plan**. Each state has laws determining how a resident's property is distributed at death if they fail to leave instructions. Although this method of distribution is an estate plan, it is probably not how most would prefer their estate to be distributed. When you create your own personalized estate plan you are determining how property passes and ensure it does so in an efficient and thoughtful manner consistent with your intentions and desires.

Due to the public nature of the probate process, we are privy to a long list of public figures who did not have personalized estate plans and the problems that has caused their beneficiaries. Here are a few examples: In April 2016, the artist Prince passed with no will at all. Five years later, the heirs (who were determined by a judge) continue a court battle regarding valuation and distribution of assets, and tax consequence. As of a 2019 calculation, the estate administration cost and legal fees totaling \$45 million, state estate taxes were nearly \$40 million and the federal estate tax calculation is still ongoing. The estate of Jimi Hendrix took 30 years in court due to disagreements over royalties and likenesses. The missing will of Florence Griffith Joyner is another tale that reminds us that our loved ones must know where to find and have access to our estate documents. Flo Jo purportedly created a will but it was never located, resulting in many years of animosity and legal battles between her husband and her mother.

We would like to think that none of these people would have wanted their loved ones to go through such costly and sad ordeals. To help you avoid these and other common estate planning mistakes, below we discuss the basics of the estate process.

METHODS OF DISTRIBUTION

To begin, we'll look at the four main ways property is distributed at death: contractual; legal title; probate; and trust. Understanding each of how and why each legal method is used for different types of property is an important building block in understanding how property can be transferred as part of a personalized estate plan.

Contractual Distributions

The beneficiary designation on an IRA, 401(k) or a life insurance policy are all examples of property passing by contract. A "payable on death" designation for other types of property; a bank account, for example, is also a contractual means for property passing at death. This designation of a beneficiary will take precedent over conflicting directions found in a will or trust.

Legal Title Distributions

How a property is owned is considered its legal title. Houses are often owned jointly, and typically in those situations held in legal title in what's known as "joint tenancy with rights of survivorship" (JTWROS). What JTWROS means is each person owns whole title to the property – if one person passes, the other person(s) listed on the title owns the entire property. Like contractual designations, legal title to property will take precedent over conflicting directions. This is often seen with bank accounts. One child is added as an owner on a parent's account to assist with paying bills. These assets now belong in full to both people titled to the account. At passing the child will own all of

the assets in the account, which may not be how the parent intended the assets to be distributed at death. If there are other children they will now have to rely on the goodwill of their sibling who owns the asset to distribute it differently. There are many other ways of having legal title, it is important to know how all assets are titled and ensure the title coincides with your estate plan.

Probate

Probate is the legal process of administering an **individual's** estate after death and is conducted through court in all states; though many states now have small estate processes that don't require a full court. Probate consists of 'proving' and reviewing the will for validity, authorizing the estates representative, distributing the property to heirs, and settling debts. If there is no will the court must determine the executor/representative, the beneficiaries, guardians of minor children, and then instruct that property is to be passed according to state law. Probate property is defined as all property owned in the decedent's name at the time of their death that does not pass via contract or legal title.

Trust Law

A concept including elements of beneficiary designations, contract and legal title is Trust Law. By definition a trust is a legal relationship in which the legal title to property is entrusted to a person or legal entity with a fiduciary duty to hold and use it for another's benefit. Utilizing a type of contract – a trust – to then title property legally, provides a mechanism for the owner of property to outline the plan for distribution of assets at death and allows the estate to avoid probate with regard to those assets. Long story short, a trust document is created, naming a person in charge to make decisions regarding the assets for the beneficiary; assets are owned by the trust.

COMPONENTS OF AN ESTATE PLAN

Now that we have provided you with the basics of how property is distributed at death, we'll turn our attention to the various components of a typical personalized estate plan:

Last Will and Testament

A standard will details how your estate is to be divided and distributed after your death, and answers the basic questions of who gets what. A personal representative is typically appointed through the will and guardianship of minor children can also be addressed. Some wills include provisions to create a trust, called a testamentary trust; however, most wills work alongside a trust and are called pour-over wills. A pour-over will scoops up any assets that are not titled in the trust and specifies that the intent was for all assets to be property of the trust. All wills must be probated, either in the full process or using a small estate process if available. The probate process is public record and although most wills won't garner the attention of the media, there are reasons for wanting privacy. Keeping your will up to date after life changes helps prevent potential problems. The actor, Heath Ledger, created a will in his home country of Australia when he was younger. He neglected to update his will upon moving to the US and having a child. When he passed in 2008, his daughter and her mother were not included in his outdated will, which left his assets to his parents.

Trust

A properly drafted and funded trust ensures continuity in management of financial assets in the event of disability or death. A trust acts like a will in that the trust document directs the distribution of property and can also identify guardians for minor children. The difference is that a trust is not considered a person for probate purposes and thus avoids the probate process, making a trust private and more easily managed. Trust assets may be more accessible to beneficiaries immediately following death

than assets that need to pass through the probate process. A trust must be funded to provide benefit. Case in point, Michael Jackson had completed a trust document to protect and dispose of his estate according to his wishes, unfortunately his trust was never funded. This means that his assets were titled in his name at his death rather than in the name of the trust, and his estate, worth around \$500 million, passed outside of the trust even though he did have a pour-over will. As a result, his estate had to go through probate causing delays and costs that may not have been incurred had his trust been properly funded.

Powers of Attorney

A power of attorney document gives someone else the legal authority to make important decisions for you. In these documents you name an agent to make decisions. It's also advisable to name a successor agent, maybe several in order of preference, who would step in if the preferred choice is not willing or able to handle the responsibility. The two basic types of powers of attorney are general and medical, although powers and the authority granted can vary based on the needs/desires of the person granting the power. With regard to general powers of attorney, these will ordinarily cover financial, legal, insurance and administrative matters. Whereas a power of attorney for healthcare, or naming a health care surrogate, authorizes someone to make medical decisions on your behalf should you become unable to do so yourself.

The benefit of creating powers of attorney when you're still thinking clearly and have the requisite mental capacity is that it gives you more control over your future by ensuring that the people you want deciding things for you are the ones with the legal authority to do so. Also, children who are over 18 must have their own powers of attorney as they are legally adults. Without a power of an attorney in place, in an emergency situation a parent will be unable to receive information or make decisions. An important thing to keep in mind in situations

where no power of attorney is in place, whether for your or for your adult children, is that a court ordered guardianship may be necessary in order to grant authority to someone to manage another person's (e.g. your) affairs or receive important medical or financial information. This proceeding can be time consuming, expensive and unpredictable, and in contrast to a personalized estate plan, you will have no say over who gains control over your property and care. There are many things to think about regarding a power of attorney and much nuance when determining the specifics; however, it is very important to take the time to ensure these documents are in place. Your advisor or an estate planning attorney can provide more clarity should you have questions.

Drafting an estate plan is a task that requires you to think about your own mortality and, understandably, this isn't something most people put at the top of their to-do lists. But we hope that by providing you with an understanding of how property transfers on death and what the important parts of an estate plan are has taken some of the mystery out of process and made it a little easier to think about and discuss. Although estate planning may be challenging, only by creating a personalized and well thought out plan can you provide your beneficiaries with the legacy you envision.

If you would like to discuss your estate planning needs, please give us a call.

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