

Non Probate Transfers

Almost everyone understands that “probate” is a bad thing. To that extent, we get many questions regarding the use of transfer on death (“TOD”) provisions, payable on death (“POD”) designations and the use of beneficiary deeds. Typically, these methods are better than doing nothing. However, they can also be a trap for the unwary.

The problem with TOD and POD designations is that they depend on people dying in the right order. If the beneficiary predeceases the owner of a bank account and the owner dies without doing anything further, the account will then go through probate. People assume they will have time to make any necessary adjustments if their beneficiary predeceases them. However, in our experience, that often fails to happen.

We believe that planning with a Revocable Living Trust is superior to other forms of Non-Probate Transfers. When an asset is transferred into a trust, one can provide a great deal of detail to direct “what if” scenarios. The problem with a beneficiary designation is that it cannot spell out in detail all of the various “what if” scenarios inside the beneficiary designation.

More importantly, if a person who owns an account in his or her name with a TOD or POD designation becomes incapacitated, that account is still subject to probate in the event a conservatorship is needed. Again, a Revocable Living Trust avoids any involvement with the probate court both upon disability and death.

TOD designations are often used for items such as car titles. When a person has a Revocable Living Trust, we suggest that the automobile still be owned by the primary driver. The title can then be transferred upon death of that primary driver to his or her Revocable Living Trust. Titling an automobile in joint names with another person is never a good idea for liability protection purposes.

In conclusion, Non-Probate Transfers are sometimes warranted and helpful in certain scenarios. However, the very best way to plan for one’s estate is to create a Revocable Living Trust and to transfer one’s assets into such trust before disability or death. If we can help you create a Revocable Living Trust or with your other estate planning needs, feel free to give us a call.

Contact Information:

Bradford L. Stevens
bstevens@spencerfane.com
314-333-3943

[Print](#)