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Estate Plan Basics - How Can Property be Transferred at Death?

August 22, 2011 by Deirdre Wheatley-Liss



As part of a lecture series I am giving, I am providing attendees with **an overview of estate planning** (separate from tax planning or asset protection planning, which are other topics in the series). It occurred to me that it is always good to go back to basics to provide a context both for estate planning and other foundation concepts, as they create a foundation for many of the points raised in this blog.

There are essentially 2 ways property can be transferred upon your death - Probate and Non-Probate.

Probate transfers are ones where the transfer is of property in your own name at the time of your death, with no beneficiary designation. Examples might include a house owned by John Smith, or a bank account in the name of Betty Peterson, with no beneficiary.

By contrast, **Non-Probate transfers** are ones where the property passes outside of probate due to how the property is titled or a beneficiary designations. We say that these assets pass on a person's death "by operation of law". Examples include:

- Joint accounts
- Property owned as Joint Tenants with Rights of Survivor ship (JTWROS) or Tenants by the Entirety
- Transfer on Death and Pay on Death Accounts
- Life insurance naming anyone other than the insured's estate as beneficiary
- Retirement Plans (IRA, 401(k), 403(b)) naming anyone other than the participant's estate as beneficiary

Probate property is distributed to beneficiaries depending on if a person died **Testate** (with a Will) or **Intestate** (without a Will).

If a person dies with a Will (**Testate**), then the Will controls who gets the probate assets when the person dies. The Will has no effect on non-probate assets. We often run into the unfortunate situation when the Will leaves the assets to Person A, but there is a joint account with Person B. This is great if this is what the decedent intended, but can be a mess if it was not.



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If a person dies **intestate**, they still essentially have a Will because the state that they resided in when they died will govern who gets the assets. The obvious problem here is that [New Jersey may not leave your assets to whom you want](#). For example, in a second marriage, the spouse gets essentially 50% of the assets, and the children of the decedent share the other 50%, and get them at age 18. This may not be your plan, so you are free to create a Will to create your own plan of distribution in the event of your death.

Next in the series - A Will says: Who gets What, When and How.

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