



Legal Notes

The World's Biggest Beneficiary Designation

By Attorney Kate Downes, Shelburne Falls, 413-625-2482

Two recent articles on this page have discussed beneficiary designations: one stressed the importance of accurate IRA beneficiary designations and the other recognized that having beneficiary designations on various assets can avoid the Probate Court process at death. Both articles are correct, but I would like to go a step further on this critical subject.

Any asset in an individual's sole name at the time of death, which does not have a joint owner or a named beneficiary, requires Probate Court proceedings to access and distribute. Most people would like to avoid the expense and delay of this process. Naming children or other family members as beneficiaries of life insurance policies, bank accounts, or IRAs does increase the chances that the asset will not require Probate Court proceedings, but there are significant risks in counting on this as the method to inexpensively and accurately settle your estate at your death:

- If your Will leaves your assets equally to your children, do not name only one child as joint owner or beneficiary of an asset! That child will inherit that asset, plus an equal share of the rest of your estate, with no obligation to equalize assets among the other beneficiaries. It does not matter that the named child is your nominated Personal Representative.
- Do not think that naming one child as beneficiary on each of your (now currently-equal) bank accounts will result in equal distribution. I have had clients reduce or close out accounts, without realizing that they have just reduced or eliminated a gift to one or more children.

- Remember that children can predecease you and, if that happens, there is now no beneficiary of any asset that named the child as beneficiary. If you forget or are unable to designate a new beneficiary, the asset will have to go through the Probate Court process, where it will be divided among your heirs – not pass to the deceased child's surviving children.

- If a beneficiary is too young to inherit or is receiving public assistance, is in the middle of a divorce, has a child support obligation, or lacks financial acumen, that beneficiary should not be receiving funds directly.

The best solution? Execute a revocable living trust, name the trust as owner or beneficiary of all assets, and, in the trust, provide all the detail you

“Execute a revocable living trust, name the trust as owner or beneficiary of all assets, and, in the trust, provide all the detail you want about who gets how much, whether a share should be managed by someone else, and what happens if a beneficiary predeceases you. This will ensure that your entire estate, no matter how small and no matter what assets you liquidate, will be distributed privately, precisely as you wish, and in the best interests of the beneficiaries.”

want about who gets how much, whether a share should be managed by someone else, and what happens if a beneficiary predeceases you. This will ensure that your entire estate, no matter how small and no matter what assets you liquidate, will be distributed privately, precisely as you wish, and in the best interests of the beneficiaries. I call it “the world’s biggest beneficiary designation!”

The views expressed in this column represent general information. To address your particular and specific needs consult your own attorney. If you need help with referral to an attorney, contact the Franklin County Bar Association at (413) 773-9839 or the Worcester County Bar Association at (978) 752-1311.

Call Community Legal Aid at 413-774-3747 or toll-free 1-855-CLA-LEGAL (1-855-252-5342) during their intake hours (Monday, Tuesday, Thursday, and Friday from 9:30 a.m. to 12:15 p.m. and Wednesday from 1:30 p.m. to 4:15 p.m.). Apply for help anytime online by visiting www.communitylegal.org. Franklin County Office is located at 55 Federal St, Suite 120, Greenfield, MA. The office is no longer open for walk-ins. Services are free to people age 60 and older. Advocates are Jan Stiefel and Wendy Kane.