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FIRST STEP FOR CREATING AN ESTATE PLAN: IDENTIFY YOUR ESTATE

The initial step in the estate planning process is to identify your estate by determining: (1) what property you own, (2) its value, and (3) how it is owned. With this information, you can begin the process of planning your estate.

What is an Estate?

Simply put, **your estate is everything you own.**

What is important for the estate planning process is how we each hold property. It is the ownership (both the type and manner) of property that dictates how your property will be transferred at death.

Type of Property

All Property can be classified as either real property or personal property:

- **Real property** is land. Examples include a primary residence, a vacation home, investment real estate, a farm, a condominium, or any interest in land.
- **Personal property** includes all property that is not real property and includes two types:
 - (1) **Tangible personal property** is property that has independent substance. Examples include furniture, jewelry, cars, or stamp collections.
 - (2) **Intangible personal property** includes personal property that has value, not for what it is, but for what it represents. Examples include stock certificates, bonds, promissory notes, contracts or claims.

Another way to classify property looks at how state law governs the transfer property:

- **Probate property** is all property that, at death, transfers through a Last Will and Testament. Probate property must go through the probate process to get to beneficiaries.
- **Non-probate property** can be defined as all property that is not probate property. Non-probate property gets to the appropriate beneficiary at death, not through the probate court, but through other means.

METHODS OF OWNING PROPERTY

Property can be owned in different ways and that helps determine how it transfers to beneficiaries and whether it is probate or non-probate property.

Examples of probate property (transferred to beneficiaries through a will/probate) include:

- **Individually Owned Property** (assets owned in the name of a single owner with no automatic transfer arrangements); or
- **Tenancy in Common Co-Ownership** (assets owned as tenants-in common with another).

There are several types of non-probate property:

- **Right of Survivorship Property** (assets owned with another where the surviving joint tenant automatically takes full ownership without going through probate).
- **Contractual Property.** Many types of property pass from one owner to another by virtue of a contractual provision, including:
 - **Life Insurance.** The Beneficiary of a life insurance policy receives the policy proceeds at death.
 - **Retirement Accounts** with a Designated Beneficiary. The beneficiary named in an IRA gets the property at the death of the owner by virtue of the beneficiary designation. Governments dictate how (and when) some property is transferred, such as qualified retirement plans, which must pay benefits to a surviving spouse.
- **Revocable Trusts.** Revocable trusts are the final way that property can pass from one individual to another without going through probate. This is why revocable trusts are used as a preferred means of transferring property.

Property with More Than One Owner

There are different ways that people can hold ownership together. For real property, this is determined by language in the deed conveying title to the property. For tangible property, it depends on how the account or certificate is titled.

- **Tenancy in Common.** Tenants in common is the default way for two or more unmarried people to concurrently own real property. Each co-owner has an undivided interest in property. When one tenant in common co-owner dies, his interest does not pass automatically to the surviving co-owner. Rather, it is “probate property” and passes through the probate court under the terms of the Will.
- **Tenancy by Entireties.** This is a special method of joint ownership for spouses in which the surviving spouse automatically owns the entire interest in the property at the death of the first spouse.
- **Joint Tenancy with Right of Survivorship.** When two or more people hold title to property as joint tenants with right of survivorship, each co-owner has an undivided interest in the property. At the death of the first joint tenant, the surviving individual automatically takes full title to the property. Many banks define all joint accounts as being owned this way. With regard to real property, the instrument creating the joint tenancy must specify that each co-owner will own the property with right of survivorship.

For tenancy by the entirety and joint tenancy, the surviving tenant becomes the sole owner of the property without the need for any probate proceedings. However, to *document* the passing of title to real property upon the death of a joint tenant, there are minimal filing requirements with the probate court of the county in which the real property is located. Also, the property may be subject to the rights of creditors holding unsatisfied debts of the deceased joint tenant (including state and federal taxing authorities).

Holding property jointly with survivorship rights can be a helpful form of estate planning, especially for smaller estates (where the total combined value of the husband's and wife's estates is under the single estate tax exclusion amount). It may also ease the administrative burdens of the death of a *non-resident* co-owner by minimizing the need for estate administration.

TIP: For small estates, a married couple should consider holding all property as joint tenants with rights of survivorship. At a minimum, keeping at least one bank account with this method of ownership can provide an instantly available source of funds to pay medical, funeral, or other emergency expenses. The amount that should be available to cover such expenses depends on each individual's lifestyle and projected needs.

WRAP UP

- Estate planning is an ongoing process through which you take an honest look at your current situation and plan for the future.
- If you don't take control of your estate plan, someone else will and default rules will apply, whether or not they make good sense for your particular situation.
- The initial step in the estate planning process is to identify your estate (everything you own) by determining: (1) what property you own, (2) its value, and (3) how it is owned.
- Property can be owned/titled in different ways and that helps to determine how it passes to beneficiaries.
- Once you know what you own, then you can move on to decide what to do with it.

For more information on this topic, contact us any time!

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