PacificCPE

COURSE
40653A

Probate Avoidance Strategies and Guardian Designations

Helping clients avoid probate can save time, money, and family stress. This course explores practical strategies—including beneficiary designations, deed transfers, joint ownership, and small estate procedures—that allow assets to pass outside of probate. It also addresses one of the most personal aspects of estate planning: choosing a guardian for minor children. CPAs and advisors working with families will find this course highly relevant to the conversations they're already having with clients.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

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Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Identify the states that allow transfer-on-death (TOD) deeds.
-

Recognize common problems faced by people naming personal guardians for minor children.

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Chapter 1: AVOID PROBATE BY DESIGNATION, DEED, JOINT OWNERSHIP, AND SMALL ESTATES PROCEDURES

Chapter Objective

After completing this chapter, you should be able to:

- Identify the states that allow transfer-on-death (TOD) deeds.

So far, we've taken a look at the core documents and legal concepts that define estate planning—you've gotten a crash course in wills, trusts, and forms of property ownership. By using a will, trust, or a type of property ownership, you will be able to effectively transfer your property and put structures in place to manage that property for beneficiaries.

Simple wills can provide for ownership succession and management; living trusts can too—and avoid probate. But if all you want or need to do is transfer property to avoid probate (as opposed to managing that property once it is transferred), you can use the tools in this chapter, which are easy and quick. Usually, you need only fill out relatively simple forms that you can change whenever you want to.

For many people, especially those with young children, complicated families, or complex assets, these tools are not a substitute for a well-drafted estate plan, but they can be a great addition to one. And for others, especially those with very simple assets and adult beneficiaries, they can be all you need to avoid probate, pass your property on at death and rest easy now.

Many of us, of course, also have retirement accounts. These accounts also transfer by beneficiary designations, not by will or trust. I'll discuss those in Chapter 1 of course 40656B.

PAYABLE-ON-DEATH DESIGNATIONS

Payable-on-death designations are easy ways to name beneficiaries for bank accounts, stocks, mutual funds, and some government securities, just by naming them on forms provided by the institution holding those accounts. If you designate an account or investment as a "payable-on-death" (POD) or "transfer-on-death" (TOD) account, it will pass directly to the people you've named as beneficiaries, with no need for probate. Like magic, you've saved your family time, paperwork, and money.

Naming account beneficiaries is a simple, inexpensive way to leave particular accounts to particular people. During your lifetime, your beneficiaries have no right to the money in those accounts, and you can change your mind anytime you'd like if you decide to change beneficiaries.

HOW POD AND TOD ACCOUNTS WORK

A POD bank account is just a regular bank account that you leave to a particular person at your death. Your bank will ask you to fill out a form designating a beneficiary for that account.

After your death, the named beneficiary owns the account after showing the bank a death certificate and acceptable identification. No probate is necessary to transfer the asset. Many banks and credit unions offer such accounts. Some call such accounts "Totten trusts." Regardless of the name, they all work the same way.

Example

Sam has a savings account containing $50,000. He would like to leave this account to his nephew, Evan, who is 19 years old. Sam fills out a POD form at his bank, naming Evan as the POD beneficiary on the account.

During Sam's lifetime, Evan has no right to the money in the account. When Sam dies, Evan will own the account. To claim it, he'll need to show the bank his identification and a death certificate. Sam will need to have let Evan know about the account, though—the bank will not tell anyone who the beneficiary is, not even Sam's executor, without a court order.

If you own stocks and bonds, you probably hold them in a brokerage account (as opposed to holding actual stock certificates in a safe deposit box or under your bed). In that case, you'll get the paperwork from the financial institution holding your account. Every state except Louisiana and Texas has adopted a law that permits TOD registration (the Uniform Transfer-on-Death Securities Registration Act). (This designation method is also sometimes called "beneficiary registration.")

Unfortunately, just because TOD registration is permitted almost everywhere doesn't mean that your broker offers it. The law doesn't require firms to offer this option; it just gives them the option to do so. If you can't get your broker to cooperate, you can always move your account to someone that does, following a golden rule of estate planning: *Those with the gold make the rules*.

Example

Etta has a brokerage account that holds mutual funds and stocks. She would like to name her sister, Florence, as her TOD beneficiary. Etta's broker tells her that they don't offer such accounts, so she moves her account to a broker that does and names Florence as her TOD beneficiary. Upon Etta's death, Florence is the new owner of the account after presenting the brokerage company with a death certificate and proper identification. The rest of Etta's estate goes in equal shares to her two daughters via her will.

You can also name beneficiaries for U.S. savings bonds and other forms of government securities. In order to do this, though, you have to have an account at TreasuryDirect. If you hold your bonds in paper form and want to add or change a beneficiary designation, you'll have to send your paper bonds to the Treasury Department and open up a TreasuryDirect account. Your paper bonds are then converted into electronic bonds, held in a TreasuryDirect account. Once your TreasuryDirect account is set up, you can then add a beneficiary. The registration will say, "KATHERINE REYES POD SAMUEL REYES." Katherine is the owner; Samuel is the beneficiary.

If you inherit bonds held in a TreasuryDirect account, you need to contact TreasuryDirect for instructions. If you inherit paper bonds, your options depend on what type of bond you've inherited and whether the bond is continuing to earn interest. If the bond is no longer earning interest, you'll need to cash it in (and pay the resulting tax on the interest). If the bond is still earning interest, and is a type EE or I bond, you might be able to have it reissued to you if you don't want to cash it in.

These beneficiary designations control where an account goes at your death, regardless of what your will or trust might say, so it is important to make sure that you remember which beneficiaries you've named and verify that they are consistent with your current wishes. More than a few times, I had clients discover that they'd named a sibling as an account beneficiary long before they'd gotten married and had children. Luckily, it is easy enough to change a beneficiary form so that your assets pass to the right people, but it can be easy to forget about them along the way. (The only exception to this rule is in Washington state, which permits a certain kind of will, called a "superwill," which overrides beneficiary designations by referring to that account in the will.)

WHEN POD AND TOD ACCOUNTS ARE HELPFUL

In certain circumstances, naming a beneficiary on an account, rather than using a will or a trust to transfer that account, is a great solution.

One of my favorite reasons for recommending beneficiary designations was that they don't require disclosure after your death. Unlike wills, which become public documents after you die, or trusts, which have to be disclosed in full or in part to the people named in them, beneficiary designations are private; only the beneficiary knows that they've inherited an account.

Example

Bill and Marilyn both had children from prior marriages. Sadly, Bill had become estranged from his adult sons and didn't want them to know that they had decided to leave their estate to his wife's five grandchildren, with whom he had become very close. Both Bill and Marilyn were concerned that, if their will named the grandchildren (and not Bill's sons) as their beneficiaries, his sons might challenge the will in court or otherwise make things difficult for the grandchildren once they saw that will. Because Bill and Marilyn's only assets were investment and retirement accounts that were held jointly (they had sold their home a few years before), they named the grandchildren as beneficiaries on all of their accounts. When the survivor of them dies, these assets will go directly to the grandchildren, and Bill's sons will not even know about it. Bill and Marilyn still created simple wills, leaving all of the assets to the five grandchildren, but these wills transfer only their personal property (like furniture) and any accounts without a beneficiary (but there weren't any), making it far less likely that the sons would challenge the will—since the assets in the probate estate were so few.

Another excellent use of beneficiary designations is as a way of directing one account to a certain person, even if your estate plan distributes the bulk of your assets differently. If you have a reason to name a particular account for a particular person, outside of the estate plan that you've otherwise put together, for example, beneficiary accounts are a perfect way to do this.

Example

When Steven's mother died, he inherited $175,000 in a brokerage account from her. He wants to make sure that his daughter from his first marriage, Jill, will inherit what is left in that account when he dies. Steven has since remarried, and all of his other assets will go to his new wife, Carey, via the living trust that they have executed together. He names Jill as the TOD beneficiary of the investment account, which will pass directly to Jill at his death, outside of the living trust he has made with Carey.

Example

Judith had four children, three of whom lived far away from her. Her son, Michael, lived nearby and cared for Judith as she grew older. Judith named Michael as the sole beneficiary of her investment account. When she died, her will left her estate (which consisted of her house, her bank accounts, and some treasury bonds) in equal shares to her four children, but Michael alone inherited the investment account.

Insurance for Your POD Accounts

The Federal Deposit Insurance Corporation (FDIC) insures your savings account for up to $250,000. But if your account has beneficiaries, the insurance coverage increases, to up to $250,000 per beneficiary (to a total of five beneficiaries).

> **EXAMPLE:** Steven has a savings account with $510,000. He designates his two children, Molly and Janelle, as POD beneficiaries. Because the account has two beneficiaries, $500,000 of that savings account is covered by FDIC insurance. If Steven hadn't designated anyone as a POD beneficiary, only $250,000 of the account would have been covered.

Finally, if you don't have many assets and your estate planning consists of leaving those assets to adults with no need for supervision, beneficiary accounts can make your planning really simple.

Example

Jay's entire estate consists of his bank accounts and one investment account. His children, Nancy and Claire, are both adults who are responsible with managing money. He names both of them as beneficiaries on these accounts. When he dies, they will each inherit one-half of his assets, free of probate. For Jay, this plan accomplishes his goals.

WHEN POD AND TOD ACCOUNTS ARE NOT SUFFICIENT

Creating beneficiary accounts is a great tool, but only for certain situations. If you want to distribute your assets equally to your kids, giving one account to one child can make that math difficult, because you can't know in advance how much will be in that account when you die. And if you have young children, you still need to name a guardian for them and put something in place to manage their property. For this, you'll need a will and perhaps a living trust. (See Chapter 2 of course 40651B, Chapter 1 of course 40651B of course 40654B.)

If you need to leave any of your property so that is managed for someone with special needs or someone who is irresponsible with money, you will need to leave that money in a trust. There's no other way to make sure that someone else can manage that money under specific terms that you get to set. (See Chapter 1 of course 40651B of course 40654B, Chapter 1 of course 40651B of course 40655B.)

If you need to control where an asset should go after a beneficiary's lifetime, beneficiary designations won't do the trick. Once you name a beneficiary, after you die, that asset is now entirely theirs and they can leave it as part of their own estate. If you want someone to be able to use an

account during their lifetime, such as a second spouse, but then leave it to someone that you choose, such as your children from a prior marriage, you'll need to set up a trust for that.

Most importantly, wills and trusts can do the kind of "what-if" planning that real life often requires—simple forms do not have that flexibility. Here are a few of the problems that can arise when things just don't go as planned with beneficiary forms.

Leaving Assets to Multiple People ... One of Whom Predeceases You

If you want to leave assets to multiple people, you need to consider the consequences if one of them dies before you do. To find out what would happen in that situation, you have to look carefully at the form. Most forms state what happens if a beneficiary dies. If you see the words "per stirpes," it means that a deceased beneficiary's children will inherit their share, equally. For example, if you have named a son and daughter, and your son dies first, leaving two children, your daughter will receive 50%, and each grandchild will receive 25%. But if you see the words "per capita," it means that all surviving beneficiaries will receive an equal share. In the example above, your daughter and each grandchild receive one-third of the remaining assets. You need to read the form you fill out carefully or ask the bank or brokerage account what happens when a beneficiary dies before you do.

If all of your beneficiaries die before you do, the account will go to your estate, triggering the probate you were trying to avoid.

Example

Donald named his daughter Mathilda as his POD beneficiary for an investment account that held $1 million. Mathilda died first. When Donald died, because the account did not have a named beneficiary, the account went to his estate, requiring a probate proceeding before it could be transferred to Mathilda's three children.

Leaving Unequal Amounts

If you want to leave assets in unequal shares to beneficiaries, some POD and TOD registrations will not allow it. You might need to create separate accounts for each beneficiary to hold unequal shares. It might be easier to use a will or a trust instead.

Example

Clara and Russell recently sold their home and moved into a retirement community where they are renting a condominium. Their main asset is their brokerage account. They have three children. One of their children is a successful doctor; one is a struggling artist; and one has seven children and has recently been diagnosed with a rare form of cancer. They want to keep their estate planning simple, but they do not want to leave equal shares to each of their children and are concerned that their youngest child might not survive them. Their estate planner recommends that they not rely on TOD registration for the brokerage account as their estate plan, but instead put together a living trust, which will allow them to leave different shares for each child and to put a trust in place to hold assets that may pass directly to their seven young grandchildren if their mother dies first.

Leaving an Account to a Minor

If you are leaving an account with more than a few thousand dollars to a minor child, you should leave it in the care of a custodian until that child is at least 21 years old, or older if you state allows it. (See Chapter 1 of course 40654B.) If you don't, a property guardian is going to have to be named by a court, and the money will probably be held in a locked account until the child is 18.

Example

Thomas and Christine want to leave some money to their goddaughter, Lisa, who is five years old. Here's what they put on the beneficiary form for an investment account: "Carol Ann Garcia (Lisa's mother), as custodian for Lisa Ann Garcia, under the [STATE] Uniform Transfer to Minors Act, until Lisa reaches age 21." If both Thomas and Christine die before Lisa is 21 years old, Carol will act as the account's custodian and manage it for Lisa's benefit. When Lisa turns 21, the account will be hers alone. No court-supervised guardianship will be needed, and Carol will have had flexibility in how she invested the funds.

Tying Up Funds Needed to Pay Creditors and Taxes

Naming a beneficiary for your bank or stock accounts, which should speed the money or asset their way, doesn't change a thing when it comes to the rights of creditors or the IRS. They still get first priority. It's true that you have named new owners for your accounts, but your estate has to cover any outstanding debts or taxes *before anyone else gets to inherit your assets*. A beneficiary might legally inherit your account, but your estate's creditors have a right to recover any unpaid debts on that property first. And while most families aren't subject to estate tax at this point, because it applies only to estates valued at more than $15 million in 2026, in the event that you're subject to this tax