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Common Estate Planning Questions Part 1 of 2 - On How to Handle Your Assets

When it comes to estate planning, I get many questions about many topics. One of the most common questions I hear concerns account ownership and asset management. Understanding how accounts are titled and who has access to them isn't just about convenience, it's about ensuring your assets transfer smoothly to your loved ones while protecting them from potential risks.

In this first installment of a two-part series, I'll answer the most common questions about asset ownership and management. I'll also outline ways in which you can make things as easy for your family after your death. So let's dive in, beginning with a question about joint assets.

Q: What's the difference between joint ownership and transfer-on-death designation?

A: Joint ownership means both parties have full access to and ownership of a specific account or piece of real estate, while living. When one owner dies, the surviving owner automatically receives full ownership. This can be convenient but comes with risks - a joint owner can withdraw all the money at any time, and the account could be vulnerable to either joint owner's creditors or legal judgments.

On the other hand, transfer-on-death (TOD) or payable-on-death (POD) beneficiary designations give you sole control during your lifetime. Your designated beneficiary has no access or rights to the account while you're alive but receives the assets automatically upon your death. This arrangement prevents another person from accessing your assets while you're alive and also avoids the court process (called probate) after you die.

One important note: When you have a joint owner on your account, or a designated beneficiary, that person will receive all the funds after you die, no matter how old they are or what your family dynamics are. This can create conflict in your family or can cause someone who's fiscally irresponsible to potentially inherit a windfall with no safeguards. Lawsuits are filed all the time by disgruntled siblings who find out that the caretaker sibling receives all the



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money in a parent's account (or sole title to real estate) rather than being distributed equally among all siblings. If this is a concern to you, read on to find out how you can book a call with me to learn about your options.

Q: If I hold my property jointly, or use a TOD or POD, do I need to have a Trust?

If you use joint ownership or TOD/POD instead of a Trust, you need to consider some traps for the unwary. First, as indicated above, jointly owned property could be at risk from creditors of either party. I think of my client, granddaughter, who was titled on grandma's bank account. When granddaughter's husband didn't pay the bill on the copier contract for his business, the copier company sued and got a judgment against him. Next thing you know, grandma's account gets garnished because it was held jointly with granddaughter, and granddaughter was liable on the copier judgment.

Suppose you use a TOD or POD to avoid a scenario like that. In that case, the problem is that the TOD/POD only operates in the event of death, not incapacity, and TOD/POD could result in the wrong person ending up getting the assets or the assets ending up in probate if there is an unexpected "order of death" issue. Imagine, grandma leaves house to grandson using TOD, but grandma and grandson are in the car together when there's an accident, and grandson dies first, with grandma dying shortly thereafter, and before she could change the TOD/POD. Who gets the property, and how? In this case, the property would have to go through probate and pass to grandma's "next of kin" according to the state intestacy statutes. Given that grandma was leaving her property to grandson, it's likely she didn't want the "state's plan" for her assets. But, that's what she'll end up with.

The solution is not to use joint ownership or a TOD/POD to pass title to assets at your death. Instead, set up a trust and retitle the property, and everything can be handled with ease, privately, and in our office, for the people you love.

Q: What happens to retirement accounts and life insurance policies after death?

A: These accounts pass directly to your named beneficiaries, bypassing probate and any instructions in your will, as long as you have named beneficiaries, and if you haven't named a minor as a beneficiary. This is why keeping your beneficiary designations up to date is crucial. If your beneficiary designations are outdated – listing an ex-spouse or deceased person, for example – your assets might not go where you want them to. Even worse, if you have no



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beneficiary listed, these accounts would go through probate, costing your loved ones unnecessary time and money. If you've named a minor as a beneficiary, the assets will be subject to a court process to hold the assets under court order until your minor beneficiary is "of age" - usually 18 or 21, depending on state law.

Q: Do I need an inventory of my assets?

A: Yes, and it's critically important that you create an inventory and keep it up to date. We include this in all of our planning options because it's one of the most important parts of the planning process, even though, surprisingly, it's not part of most estate planning with traditional lawyers or legal insurance plans. Our unique Life & Legacy Planning® process includes an asset inventory because if you don't inventory your assets, your family will not know what you have, how to find it, and how to get access to it as easily and affordably as possible. Lost assets end up in your state's treasury as unclaimed property. According to the National Association of Unclaimed Property Administrators, approximately 1 in 7 people in the U.S. - or about 33 million people - have unclaimed property, totaling approximately [\\$77 billion](#) dollars. If you want to ensure that your assets go to the people or charities you want rather than to your state government's unclaimed property fund, you need an asset inventory. And it must stay up to date.

Q: How often should I review my asset inventory and account designations?

A: Your inventory and beneficiary designations need to be kept up to date over time so they reflect your current circumstances when you die. Your Life & Legacy Plan includes regular, ongoing reviews of your asset inventory so no asset ever gets lost.

It's also important to update your asset inventory and account designations whenever you experience a major life event such as:

- Marriage or divorce
- Birth or adoption of a child
- Death of a beneficiary
- Purchase or sale of significant assets
- Moving to a new state
- Starting a business



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- Retirement

When you work with me, you won't have to remember this on your own. I'll proactively remind you to update your inventory and beneficiary designations and help make it as easy as possible for you to take action.

Q: What's the best way to organize and store my asset information?

A: Create a clear, organized system that your loved ones can easily access if something happens to you. However, be careful about including sensitive information like passwords in your will, as it becomes public record after death. Instead, consider keeping this information in a secure location and telling your trusted family members, executor, or trust administrator how to access it. I will help you explore options for the best way to do this when we work together.

How We Help You Get Organized and Protected

As your Personal Family Lawyer® Firm, we help you create a comprehensive Life & Legacy Plan that includes a complete asset inventory, proper account titling, and coordinated beneficiary designations. We'll help you understand the implications of different ownership structures and guide you in making the best choices for your family's unique situation. Plus, we'll help you keep everything updated through regular reviews, ensuring your plan continues to work as intended. You'll gain peace of mind knowing that your assets will go to the people you want in the way you want.

Click here to schedule a complimentary 15-minute consultation to learn more:

<https://calendly.com/lauren-tlppc>

This article is a service of The Legacy Planners P.C., a Personal Family Lawyer® Firm. We don't just draft documents; we ensure you make informed and empowered decisions about life and death, for yourself and the people you love. That's why we offer a Life & Legacy Planning Session™, during which you will get more financially organized than you've ever been before and make all the best choices for the people you love. You can begin by calling our office today to schedule a Life & Legacy Planning Session™.

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