

The Importance of Titling and Designations In Estate Planning

by Edward H. Miller, J.D.

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When developing an estate plan, most people assume that their wills are the final document regarding the disposition of their assets. However, many assets pass outside of probate, and thus are not affected by a will in any way. Over the last twenty years, there has been a dramatic rise in non-probate assets; thus, more and more property is passing to the next generation by means other than a will. Many well-drafted estate plans are completely undermined by the way that an asset is titled; others are affected by the designation of a beneficiary.

The titling of real property is also often a confusing subject, especially to married couples in their second marriages who title their homes as tenancy by the entirety. Titling a home as tenancy by the entirety is incredibly common when a home is purchased by a husband and a wife. However, when one spouse dies, the interest of the deceased spouse passes directly to the surviving spouse, even if the will of the deceased spouse has children from a prior marriage and intends his or her interest to pass to these children.

"Very few clients understand the implications of titling on their accounts," said John Roessler, a senior wealth manager at Budros, Ruhlin & Roe, an advisory firm in Columbus, Ohio that manages around \$1.8 billion. Many accounts are simply not subject to the terms of a will by operation of law. Mr. Roessler talks with all of his clients about how to title accounts, as part of an overall estate-plan review.

Banking rules long have allowed people to title their accounts as payable on death to an individual or individuals. This allows, for example, a husband to get his wife's account without going through probate. In the 1990s, states started to allow owners of brokerage accounts to do the same, using what is known as a transfer-on-death account. State laws, not federal ones, govern how securities are registered in the names of their owners. Now, Texas and Louisiana are the only states that don't have transfer-on-death statutes, said Benjamin Orzeske, legislative counsel at the Uniform Law Commission, a nonprofit group that promotes clarity of law among the several states.

Transfer-on-death and payable-on-death accounts let their owners bequeath securities or money without going through probate. For a brokerage

The Importance Of Titling And Beneficiary Designations In Estate (con't)

account, the beneficiary has to reregister securities in his or her name. That requires an application along with a copy of the death certificate. If no one is named on an account, it passes to heirs under the will. So, some advisers discourage the use of these accounts. Naming someone and then forgetting about it can cause problems years later.

John M. Olivieri, a partner at the law firm White & Case in New York, represented a woman named as beneficiary on a \$200,000 transfer-on-death account, who was being sued by her sister. The mother of both women had a will that left her estate to them equally. Yet his client's sister was furious that the name on the transfer-on-death account trumped the will. It meant his client would get more than her sister. Mr. Olivieri told his client she was entitled to the entire account because there was a transfer-on-death designation. But he suggested that she think instead about sharing the money with her sister. "I told her I could get her the money, but I could not get her sister to like her for taking it," said Mr. Olivieri, whose client kept all of the money in the account.

(This article was based on the recent Wall Street Journal article by Arden Dale, "Titling Errors Can Undermine Estate Plans," September 13, 2013, available on wsj.com.)



Wolverines in the West

Hook Law Center: Kit Kat, are wolverines making a comeback in the Far West?

Kit Kat: Yes, interestingly, they are. For a while, they were almost extinct in the United States. It is now believed that, through numbers provided by the US Fish & Wildlife Service (FWS), that there are about 300 living in the Lower 48 states. FWS is considering naming them as threatened under the Endangered Species Act. The "threatened" designation would offer them some protection, but not limit the human activities like skiing, snowmobiling, and logging in their habitat, which are not interfering with their lifestyle. They are related to the weasel, but have bushy tails, which make them look like bears from a distance. However, their coats are variegated with black and caramel-colored swaths. Their chin and chest are white. They truly are magnificent.

Wolverines are now living, for the most part, in five national parks located in the Rockies and Pacific Northwest. They are making a comeback after becoming nearly extinct after programs in the early 1900s which included trapping and poisoning, largely aimed at limiting wolf and bear numbers, also reduced the wolverine population. The comeback has arisen as wolverines from Canada have drifted south to the Northwest. While 300 wolverines may not seem like a huge number, it is a number that is heading upward. FWS and other western national parks are beginning to study them, and with that new information, who knows what will be learned. Sightings by humans are rare, and so scientists are relying on cameras positioned in strategic areas. Wolverines have great stamina and can travel up to 30 miles in one day in their favorite mountain passes. They are part of North America's unique, natural wonders.

(Kate Siber, "On a Ledge," [National Parks](#), Fall 2013, p. 12-14)

Upcoming Events

- Hook Law Center is participating in the National Multiple Sclerosis Society, Hampton Roads Chapter, Resource Fair at the Westin Virginia Beach Town Center on **October 23, 2013** from **5:15 pm - 6:45 pm**. This event is free and open to the public.
- Hook Law Center will be presenting a seminar to the Tidewater Parkinson's Disease Weekend Support Group at St. Therese's Catholic Church, 4137 Portsmouth Blvd., Chesapeake, VA 23321 on **November 2, 2013**.
- Hook Law Center is presenting a seminar on the Affordable Care Act to Merrill Lynch Special Needs Financial Group on **November 7, 2013**.
- Hook Law Center is presenting a seminar on the Affordable Care Act at Marian Manor, 5345 Marian Lane, Virginia Beach, VA 23462-1883 on **November 13, 2013** at **2:00 pm**.
- Hook Law Center will be presenting on Estate and Long-Term Care Planning at the Medicare Health Fair at the Virginia Beach Convention Center, 1000 19th Street, Virginia Beach, VA on **November 16, 2013**. This event, hosted by Senior Services of Southeastern Virginia, is free and open to the public.
- Hook Law Center will be presenting a seminar on Special Needs Trusts to the Parkinson's Young Onset Support Group at their bi-weekly meeting in Virginia Beach, VA on **November 16, 2013**.
- Hook Law Center will present a seminar to Wall, Einhorn & Chernitzer P.C. on **November 18, 2013**.
- Hook Law Center will present a seminar on Health Care Reform at Senior Advocate's Lunch & Learn at the Envoy of Thorton Hall, 827 Norview Avenue in Norfolk, VA on **November 21, 2013**.
- Hook Law Center will be presenting a webinar on the Affordable Care Act and Elder Law and Special Needs Planning on **December 4, 2013**. This webinar will be hosted by Interactive Legal.
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.



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