



What you need to know about titling your assets

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The way you own your assets can have a huge impact on whether they will actually pass at your death according to your estate plan. In other words, the way in which your assets are titled can either support or undermine your estate plan.

Types of property

Property can be owned in many different ways. It might be helpful to think of the different types of ownership as follows:

- **Single ownership property.** This includes property held in a person's sole name or property owned with another person as "tenants in common." It does not include survivorship property. Neither does it include retirement plans or life insurance, both of which have special features as they pass to beneficiaries at the death of the owner.
- **Right of survivorship property.** This includes jointly owned property that passes automatically to the surviving co-owner at the first co-owner's death. This property is commonly known as "joint tenancy with right of survivorship" (JTWROS). There is a special subset of JTWROS property available only to spouses known as "tenancy by the entireties." It is only available in certain states, and often in those states (especially in the case of real property), if spouses take property as "husband and wife," they automatically own that property as tenants by the entirety.
- **Beneficiary designation property.** This is simply property that is owned by one person and passes at death by beneficiary designation. It includes life insurance and annuities, individual retirement accounts (IRAs), 401(k) plans, and many types of employment benefits, such as stock options and deferred compensation.
- **Community property.** Certain states are "community property" states, which generally means ownership of any property acquired through a person's earnings while that person is married is shared — one half by that person and one half by his or her spouse. This is true even if the property is owned in one spouse's name only. Property acquired before the marriage, or by gift even during the marriage, is typically referred to as "separate property." Community property is not really a separate type of property, but can affect other types of property ownership. For example, if a husband purchases a life insurance policy with his earnings while he is married, his wife will automatically own one-half of the insurance policy

and is entitled to half the death benefit, regardless of the beneficiary designation.

- **Trust property.** This is property that a person has transferred to a trustee. The reason for doing so is to ensure that property is managed by the trustee for the benefit of the beneficiary, or in the case of revocable living trusts (“revocable,” meaning it can be revoked, and “living,” meaning it is created during the grantor’s lifetime), to ensure that trust property avoids the probate process and can be managed by someone else in the event that the person who created the trust becomes incapacitated. A trust agreement operates only over those assets held in the name of the trustee. If a grantor creates a trust but fails to transfer assets to it (known as funding the trust), it may not work as it was intended.

Problems with titling

How property passes at death depends upon what kind of property it is and what kind of planning has been done. As alluded to, issues with titling of assets can alter or defeat the estate plan you thought you put in place.

To understand the potential issues, it’s important to know what happens to property at death:

- Property you own outright passes through probate — the court-supervised proceeding that ensures that bills are paid, assets are maintained, and your heirs receive the assets to which they’re entitled.
 - Assets going through probate pass either according to a will (if there is one) or intestacy, which is the state law mandating where property passes if there is no will.
 - Although the laws of intestacy change from state to state, in general, property passes first to a surviving spouse (or to a surviving spouse and children, if the surviving spouse is not the parent), then to children, then to parents, and so on to more distant relatives.

- Property owned by a trustee passes according to the trust agreement. The trustee holds legal title to the property, while the grantor and beneficiaries have beneficial interest.
- Beneficiary property (e.g., life insurance, IRAs, and stock options) passes according to a beneficiary designation, not through probate, unless there is no completed beneficiary designation form.
- Survivorship property passes to the surviving co-owner.

Potential conflicts between an estate plan and asset titling can materialize. For example, let’s say you draft a will leaving everything to your children. However, your assets consist solely of life insurance and retirement plans, and the beneficiary designation forms name your spouse. These assets would not pass according to your will and your spouse — not your children—would receive everything.

Similarly, if you create a revocable living trust in order to avoid probate, but do not change the ownership of all of your assets to the name of the trustee, then those assets may have to pass through the probate process. Even if the assets eventually find their way to the trustee after probate is over, the benefit of having the trust in the first place won’t be realized.

We often hear stories about assets passing to the wrong people (for instance, beneficiaries who once were to receive property but became estranged from the decedent) because the asset titling wasn’t changed to reflect changes in the estate plan.

Estate planning attorneys may not be able to solve these kind of problems because, often, people do not proactively review their estate plans and only revisit them after an unplanned event has already occurred. Even if an attorney ensures that assets are properly titled at the time an estate plan is completed, people can often acquire new assets afterward, and those assets are generally the ones that cause the problems because they have not been reviewed to ensure that they are owned in the proper form.



What can you do?

Consider an annual review of your asset titling and estate plan together to ensure they align and reflect your wishes so these issues won't arise at your death. You can use the guide below as a framework to review asset titling with your professional advisors:



Build a comprehensive personal balance sheet

Make a list of all of your assets, including life insurance and retirement plans. In a separate column next to that list, indicate the way in which each asset is held; for instance, "trustee," "individually," "JTWROS," and so forth. For any beneficiary designation property (usually life insurance, retirement plans, and corporate benefits), list who you have named as primary and secondary beneficiaries.



Determine your estate plan

Determine what kind of estate planning documents you have. A will? A revocable living trust? Nothing? This assessment can help you and your advisors determine if you need other key documents established like a durable power of attorney, health care directive, or living will, for example.



Compare asset titling with your plan

It should become apparent fairly quickly if there are gaps or inconsistencies. For example, if you have a revocable living trust but your assets are generally owned in your own name, or if your will says everything passes to a trust for your spouse's benefit but your life insurance policy names your spouse as an outright beneficiary, you may have a problem.



Retitle or seek professional advice

Not all apparent inconsistencies are actual problems. For example, many estate plans leave property to a spouse in trust rather than outright, but intentionally name the spouse as the outright beneficiary of retirement plans because there may be income tax benefits to doing so. Before making any changes, you should check with your financial professionals and legal and tax advisors to determine the appropriate planning strategy for your specific wealth and legacy goals.

Your estate plan is a critical component of your financial and lifestyle planning. You may have invested a great deal of emotional energy and legal costs in establishing an estate plan that truly reflects the values that you want to pass along with your wealth. Don't let that work go to the wayside because of titling problems.

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