

ESTATE PLANNING AND ADMINISTRATION FOR FAMILIES IN TRANSITION

Unique Circumstances; Unique Issues

Ideally, the planning process would be approached calmly and methodically; however, often a family's complete attention is required by health care, hospice, or the upcoming transition. When circumstances are unique, the question is frequently asked, "What can be done, given our current situation?"

When Comprehensive Planning is Not Possible, there are Still Options . . .

When a traditional, comprehensive approach to planning is not possible, there are a few actions families can take to ensure as smooth of a transition as possible. Each option below has its own advantages and disadvantages, and should be considered carefully.*

Create a Will

Creating a will allows an individual to express their intentions, but the estate will still likely go through Probate. Even a handwritten will is permitted if certain criteria is met.

Designate Beneficiaries

Beneficiary designations will bypass the probate process upon death. (Although there is no help in a situation where the account holder is incapacitated).

Joint Ownership

Joint ownership with an intended beneficiary avoids probate and allows for help when incapacitated. However, negative tax and liability implications need to be considered.

Create and Fund a Trust

Creating and funding a trust is ideal as it is going to avoid probate, provide for help and control while incapacitated, and often has tax benefits.

When the Time Does Come: Available Options When Administering an Estate

When administering the estate of a family member, there are often very simple options prior to needing to open up a full probate or even administer a trust. Note the estate administration process has its own required process, but the following options are available when it comes to distributing assets.*

Does the Asset have Designated Beneficiaries?

If the asset has a formal beneficiary designation on file with the financial institution, administration could not be any simpler:

1. Obtain a certified copy of the **death certificate**.
2. Contact the financial institution and inquire about any **forms** or processes specific to that organization.
3. **Present** death certificate and any forms to financial institution.
4. Financial institution **transfers asset to beneficiary**.

Is the Asset Jointly Owned with Another?

If the asset is owned jointly with another individual, the surviving owner automatically takes ownership. The process to update title/ownership is also quite simple:

1. Obtain a certified copy of the **death certificate**.
2. Create an "**Affidavit of Death**."
3. **Present** death certificate and affidavit to financial institution.
4. Real estate will require **recording** these documents.

Are There any Non-Probate Options?

There are options which can be explored prior to resorting to probate:

- **Small Estate.** If the total estate left over is less than \$150K, such can be administered out of court with a simple affidavit.
- **Spousal Property.** If the surviving spouse has a right to ownership, a simple court petition can clean title / ownership.
- **Heggstad Petition.** If an asset was supposed to be in the trust but wasn't, a petition to the court can posthumously transfer it.

Is the Asset Owned by a Trust?

If the asset is owned by a trust, then it can be distributed without court intervention. After general trustee tasks, distribution is straight forward:

1. Obtain a certified copy of the **death certificate**.
2. Create an "**Affidavit of Death**."
3. **Present** death certificate and affidavit to financial institution. Asset will be released for later distribution to beneficiary.
4. Real estate will require **recording** these documents.

PROBATE

**Not legal advice; for informational purposes only.*

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