# There's a Will—Is There a Way?

By Claire E. Toth, JD, MLT, CFP™
Point View Wealth Management, Inc.
ctoth@ptview.com
(908) 598-1717

You just signed a new will, reflecting a careful balance of family protection and tax minimization. Congratulations, but don't think you have covered all your bases quite yet. Large components of many people's wealth aren't governed by the will at all. It's important to determine what controls the disposition of each asset at your death, so you can ensure everything works together. Otherwise, your survivors could be in for a nasty surprise.

It may be easiest to review what your will doesn't cover. One big category is insurance policies, annuities, and retirement plans (including IRAs). These are governed by their beneficiary designations. The stereotypical beneficiary designation leaves everything to the surviving spouse, or to the children if there is no surviving spouse. This may not be the right choice for you. Horror stories abound—fail to change your beneficiary designation following a divorce, and your former spouse may inherit the bulk of your assets. Forget to update it after a child is born, and that child may be disinherited. If you have no beneficiary designation at all, these benefits will likely be paid to your probate estate, which can create a huge tax bite. An IRA paid to your estate must be fully distributed within five years, accelerating the income tax bill. Pay that same IRA out to a surviving spouse or a child, and the distribution is extended over the beneficiary's life expectancy.

For those living in states with their own estate tax (New Jersey, New York, and Massachusetts among them), it is particularly important to coordinate the beneficiary designation with the tax provisions in the will. Often the will has the estate tax paid solely from the assets it governs—in a worst case scenario, your IRA goes to your former spouse and your children are left to pay the tax bill.

Other assets may or may not be governed by your will, depending on how they are titled. For example, when a married couple buys a house, they typically own the house either as tenants by the entirety or as joint tenants with right of survivorship. Financial accounts can also be owned in joint tenancy—that is the default for married couples. With both of these forms of ownership, when one co-owner dies, the entire property automatically goes to the other co-owner. There can only be two co-owners. Further, each co-owner always owns half the property.

An alternative form of ownership is tenants in common. There can be more than two tenants in common, and they can own other than 50-50. When one tenant in common dies, his or her share does not automatically go to the co-owner(s). Instead, it is governed by the will. Tenancy in common is particularly useful when a husband and wife both want lifetime control of an asset and anticipate an eventual estate tax issue. In that situation, the will usually provides that at the death of the first spouse, a bypass trust (sometimes called a credit shelter trust) is created for the survivor. This trust benefits the survivor without the survivor owning it for tax purposes. Having assets owned by tenancy in common during life provides assets to fund the bypass trust at the first death.

It is also possible to set up a financial account (but not a physical asset) as "payable on death" or "transfer on death." That is equivalent to establishing a beneficiary designation on the account, with all the pitfalls discussed above.

What does that leave for the will to govern? Your will controls assets you own individually, as well as your share of assets owned by tenancy in common. Unless you have done some intentional estate planning—or perhaps you and your spouse never combined your assets—your will may not control very much of your net worth.

Given all these forms of ownership, what makes the most sense when planning your estate? As discussed at the outset, you have no choice when it comes to insurance policies, annuities, and retirement plans—the beneficiary designation governs, and you do not want your estate to be the beneficiary. For those assets, be certain that your beneficiary designations are lined up with the rest of your estate plan. Verify them periodically and as your personal circumstances change, to be sure they continue to work in tandem with the rest of your estate plan. When possible, combine different retirement accounts—roll out 401ks at former employers into a single IRA (Roth IRAs and inherited IRAs must be kept separate). You may be able to combine some annuities, as well. The fewer beneficiary designations to track and coordinate, the better.

As to the taxable assets, it makes the most sense to consolidate everything in your will rather than to set up beneficiary accounts. Then one person—the executor—is in charge, with clear authority to act on every account. The executor already needs information about all of your holdings to file tax returns, accountings, and the like. This eliminates the need to keep multiple accounts—and account beneficiaries—coordinated.

This is particularly important if you want your assets to go to children under age 18 or to anyone who may be at risk—because of disability, financial insecurity, or a host of other issues. Here, you truly want to establish a trust, and you cannot do that with a beneficiary designation.

In states where probate is long, expensive, or complicated (for example, California and Florida), it may be tempting to use beneficiary designations on accounts, simply to avoid probate. Except in the simplest and smallest of cases, using a revocable trust is a far better alternative than employing multiple beneficiary accounts. That gives your trustee the power to act as executor after your death and the power to look after your financial interests before your death as well. Your estate planner can help you decide if a revocable trust is right for you.