

FORTIFYING YOUR ESTATE PLAN THROUGH PROPER FUNDING

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As Robert Burns wrote, "The best laid plans of mice and men oft go awry." One of the most frustrating things we see in our practice for our clients and their beneficiaries is a plan that falls apart because of inadequate or improper funding. And unfortunately, improper funding is most often discovered after someone's death when it is too late to correct the problem. A trust that is not properly funded may frustrate rather than effectuate the intent of the person who created it.

What are the consequences of a trust that is not funded? At a minimum, it lengthens and complicates the administration process for beneficiaries. Often, it results in a Probate Administration for assets that are not in the trust. Most notably, however, it frustrates the intent of the person who created the trust. Since a primary goal of planning is to make sure your objectives are accomplished, it is disconcerting to know that planning can be so easily undone if funding is not handled properly.

The good news? After a

plan has been established, following these basic steps regarding funding can avoid most, if not all, of these problems.

THE FUNDING INSTRUCTIONS. When our clients sign their trusts, every client is given detailed funding instructions. We discuss each of the client's assets with the client to determine who the owner and beneficiary currently are, what changes, if any, should be made to those designations, and who will be responsible for making those changes. Each client is then given a set of instructions specific to their assets and their plan to take with them to begin making the recommended changes.

EXECUTION...STEP TWO IS THE KEY! The next step is to actually make the changes by executing and submitting the paperwork required to make the changes. Depending on the type of asset involved, it can be as easy as completing and submitting a change of beneficiary designation form or adding a payable-on-death designation to an account. Often, it requires completing a change of own-

ership form. If real estate is involved that needs to be transferred into the trust, our office will prepare or coordinate the preparation and recording of the proper deeds. If more complicated funding is involved, our office is ready to assist you through the funding process. The key to this step is being organized and making sure all of the paperwork is correct and submitted to the proper party. At this stage, we work closely with other members of the planning team such as investment advisors, life insurance professionals and accountants.

FOLLOW-UP. Once the trust is initially funded, the vast majority of the work is over. However, it is important to always keep the plan in mind when changes occur, including acquiring new assets, restructuring of assets, purchasing or selling real estate, and changing financial institutions. This step can often be accomplished quickly and easily by either referring back to the funding instructions or making a quick phone call.

PITFALLS WITH JOINT OWNERSHIP AND GIFT TAXES

We often see clients attempt to avoid probate or make managing the daily financial affairs for someone other than a spouse, especially an aging parent, by establishing joint ownership on an account or a parcel of real estate. However, except as between spouses, adding someone as a joint owner can trigger some gift tax problems if you are not careful.

For example, suppose your parent has a parcel or real estate valued at \$100,000, and you made no contribution to purchase the property. When your parent adds you as a joint owner of the property, your parent is making a gift to you of

\$50,000. In Tennessee, the current gift tax exemption amount per person per year is \$12,000. Thus, anything in excess of \$12,000 (\$38,000 in the example) would be subject to Tennessee gift tax.

If a joint owner is added to a bank or brokerage account, the gift is not considered a completed gift until the original owner passes away. However, for real estate, the gift is completed as of the date the deed is signed transferring some partial ownership interest in the property to you, a sibling or another family member. If a gift tax return is not filed and gift taxes are

not paid, your parent or their estate may owe gift tax on the initial transaction plus interest and penalties from the time the gift was considered a completed gift. Thus, if your parent added your name to the deed and died five years later, their estate could be liable for the gift tax plus interest and penalties that have accrued during the five years. There are several other planning tools that can accomplish the owner's objectives without triggering these gift tax problems.

If you have any questions about joint ownership and gift taxes, please contact our office.



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FIRM NEWS

We are pleased to announce that Lindsay Jones has completed her licensing requirements in Mississippi and has been admitted to practice law in Mississippi. This will allow us to expand our practice to better serve our clients who live and work in Mississippi as well as those who may have claims in Mississippi. Congratulations, Lindsay!!


HAPPY

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