Beneficiary Designations

Most people are familiar with life insurance policies, that allow you to designate who will receive the proceeds of the policy upon your death. You can now make the same kind of beneficiary designation most places you keep money. For example, New Mexico bank accounts allow a "Pay on Death" or POD designation. This means that during your life, you own and control the account. However, after you die, the bank reads the POD provisions and pays whatever is in the account to the person or people you named. Similarly, most mutual and money market funds allow you to name a beneficiary. Further, many stocks now allow you to name a "Transfer on Death" or TOD beneficiary.

Money paid to your beneficiary passes outside of probate and apart from your will. **You should be sure to name the person or people you would like to eventually receive the proceeds of your account.** Do not name one child based upon that child's oral promise to share the money with someone else. Although the child might have a moral obligation to distribute the money, the money would legally belong only to that child. Do not tempt your child to do something wrong; **clearly name all the beneficiaries who should receive your money upon your death.**

It is a good idea to have beneficiary designations for all your money accounts. Then the money passes quickly to the intended beneficiary without probate.

Transfer on Death Deed

As of June 2001, you can execute a deed which provides who will own your real property after your death without the need for probate. A state law allows real property owners to execute a transfer on death deed during their lifetime. The transfer on death deed does not change title during the owner's life, but when the owner dies, the beneficiary named in the deed becomes the owner without probate. For more information, see Senior Citizens' Law Office brochure, "Transfer on Death Deeds."

Joint Ownership

Married people are familiar with joint ownership. Likely their home, car and bank accounts are held jointly with a right of survivorship. This means that if one joint owner dies, the surviving joint owner gets the asset without the need for probate or other legal action. This is why probate is highly unusual when one spouse dies.

Sometimes people ask if you can hold a house or a car jointly with a child. The answer is yes, although joint ownership with a non-spouse is generally not advisable.

When you put a child's name on your house, you make a current gift of that asset to the child. The child will own it. This comes with risks. First, you lose control of your home. If you want to sell or mortgage it, you need the child's consent. If the child has bad debts or is involved in a traffic accident and is unable to pay the damages, the creditors could seek to use your home to pay the child's debt. It is generally safest for single people to hold property solely in their names, and to provide the property pass after death through a beneficiary designation (bank accounts, mutual funds, and stocks) or a transfer on death deed (real property).

Durable Power of Attorney

A durable power of attorney is a document that allows you to nominate someone to handle your health care or financial decisions if you are no longer able to make them yourself. The power of attorney gives you a voice in how these important decisions will be handled and allows you to select the best person, whether a friend or relative, as your spokesperson. The power of attorney should avoid a costly and time consuming conservatorship or guardianship if you ever become incapacitated and will allow for the orderly management of your estate. <u>A durable power of attorney is effective only while you are living.</u> After death, your plan for joint ownership, will and beneficiary designations will direct how your estate is to be distributed.

Probate May Be Avoided

Tools such as beneficiary designations and transfer on death deeds allow many to develop a simple estate plan that avoids probate.

A typical simple estate includes a house, furniture, car, and money in the bank. The house can pass without probate to beneficiaries named in a transfer on death deed, the bank account through a beneficiary designation, and the Motor Vehicle Division will transfer the car to the person named in a will or entitled to inherit through intestate succession. The furniture in the house can be divided according to a list of tangible personal property left with a will, or according to the shares provided to relatives by intestate succession. By using the five elements of a simple estate plan, it is possible to put your affairs in order for minimal cost and to save your loved ones the time and expense of probate.

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SENIOR CITIZENS
LAW OFFICE

IMPORTANT ESTATE PLANNING DOCUMENTS

Some people think that when they have executed a will, their estate planning is complete. However, a will is only one component of a good estate plan. There are at least five fingers to planning the simple estate:

- Will
- Beneficiary Designations
- Transfer on Death Deed
- Joint Ownership
- Durable Power of Attorney