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SUCCESSFUL ESTATE PLANNING: THE DEVIL IS IN THE DETAILS

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Have you taken the step and met with your lawyer and completed your estate plan? If so, how long has it been? If it's been more than five years, chances are there have been changes in the law, in your family, in your business or in all of them.

Even if it is not time for an update, at the very least, you should re-visit your assets and their values at least once a year. If you have a Trust plan, you need to ensure your assets are either titled into your Trust or titled Transfer on Death to your Trust. For example, is the grain trailer you bought last year titled into your trust? If not, it is a probate asset that will require a probate estate.

How your assets are titled is a very important component of estate planning. The title determines the current owner and where the asset goes upon the owner's death. For example, you and your spouse may own parcels of land jointly, but some may be titled as survivorship interests and some may be titled as tenants in common. How they are titled determines how they will transfer upon your death.

Joint Tenants in Common

Joint tenants in common is the most common type of joint titling and it is the default of joint ownership in Ohio. This means if no other type of joint titling is designated, under Ohio law, the asset will be titled tenants in common. If one spouse or co-owner (co-tenant), dies with an asset titled in this manner, the asset will pass either as directed by that person's Last Will and Testament or by Ohio's intestacy laws. Either way, this asset will go through probate to pass to the new owner.

Joint Tenants with Rights of Survivorship

Joint tenants with rights of survivorship means the asset will be titled to the individuals for both of their lives. At the first death, the asset will pass directly to the living tenant, outside of probate. The actual transfer is done by filing an affidavit with the county recorder's office, if the asset is real estate. At the second death, if no other titling is done, the asset will pass either as

directed by the second person to die's Last Will and Testament or by Ohio's Intestacy Law's, through the probate process. To achieve ownership as joint tenants with rights of survivorship, specific verbiage is required in the titling language. The title must list the owners' names and then the words, "for their joint lives," or "jointly with rights of survivorship."

For example, a husband and wife own land together as joint tenants with rights of survivorship. When the husband passes away, his half will pass to his wife automatically, without going through probate. Survivorship interests can be shared among any co-tenants, not only spouses.

Transfer on Death Designations (TOD)

TOD is a relatively new strategy for titling assets. This type of titling allows the owner to retain ownership of the asset but designates to whom it should be transferred upon the owner's death.

For example, a husband could title his half of the real estate "transfer on death to Husband's Trust". Now when the husband dies, his half will go to his trust and avoid probate. Transferring assets to trusts instead of to spouses can have estate tax and asset protection benefits. Before the adoption of TOD designations, land was required to be titled into trust to avoid probate.

Now, the TOD designation allows land to stay out of trust until the death of the owner

and still avoid probate. Some people prefer to keep their land out of trust during their life. TOD designations are commonly used on titled vehicles to keep ownership in the name of the owner but avoiding probate upon death. For real estate, TOD designation used to be done through a TOD Deed. Ohio law changed in 2009 allowing individuals to add TOD designations to real estate through an affidavit. If you have a TOD Deed, talk to your attorney to ensure it will achieve your goals.

There are other types of titling but these three are the most commonly used. If your goal is to avoid probate and you have a trust based plan, then you want the distribution plan in your trust to determine how your assets are handled at your death. To make sure this happens, you should review your assets and determine how each asset is titled. Even if you have a will based plan, many assets can avoid probate by making sure each of your assets is titled jointly with rights of survivorship or TOD directly to one or multiple beneficiaries. All titled assets will need to be addressed. Don't forget items like trailers, motorcycles, vacation timeshares and business ownership certificates or stock shares. Non-titled assets, like machinery and personal items, may be assigned to a trust in a trust based plan. ■

(This article is for informational purposes only. These are general principles of titling. Each person's situation is unique. Consult your attorney for advice on titling of your assets.)

