Decedent Account Legal Frequently Asked Questions

What happens if there isn't any estate planning?

If someone dies without a will or a trust and didn't use beneficiary or transfer on death options, state law will determine who inherits the property and probate will likely be necessary.

What is a Beneficiary Designation?

A beneficiary designation is a contractual agreement where the insurance company or financial company agrees to pay the designated person or entity the specific asset upon death. For example, Bob may list Susan, his sister, as the payable on death (POD) beneficiary for his savings account at ABC Financial. When Bob dies, ABC Financial will pay Susan the balance in Bob's account, without Susan having to first go to probate court.

What is joint tenancy?

An asset that is titled as "joint tenants" is owned by at least two people with each party (or tenant) having an equal right to the asset. Each tenant has survivorship rights. For example, if a parent and child own a financial account as joint tenants and the parent dies, the child automatically inherits sole ownership of the account. Surprising to most, assets titled as "Joint Tenants" are NOT controlled by their Will or Trust. Even if your Will or Trust directs that you want someone in particular to receive your share of a jointly owned asset, it will still go to the surviving owner.

What is the difference between a will or trust?

A will is a written instrument that outlines how your assets are to be distributed at your death but not assets directed to others through beneficiary designations (e.g. life insurance or retirement benefits). A will goes through the probate process. Probate is the legal process by which a deceased individual's assets are distributed under court supervision. This process is necessary to distribute assets that are solely in the name of the deceased person. Your personal representative named in your will is responsible for probating your will and settling your estate. Typically, a petition of probate must be filed with the court for a personal representative to be appointed. If the person agrees to be the personal representative, and no one objects, the court will issue domiciliary letters. These letters authorize the personal representative to gather the estate's assets, sell assets, pay creditors, and open an estate financial account.

On the other hand, a trust is a written instrument that describes how your assets are to be managed once they have been funded into the trust. The trustee is the individual or trust company named in the trust document to be in charge of the assets that are held in the trust. Assets held in a trust avoid probate, which means that court supervision is typically not required. Upon your death, the trustee will distribute the assets held in the trust to your named beneficiaries and subsequently close down the trust, similar to a personal representative, without the burden of probate.

What is a transfer by affidavit?

When a deceased person dies with Wisconsin property subject to probate which doesn't exceed $50,000 in gross value, a person (the Affiant) may sign an affidavit and then collect, receive, and have the decedent's interest in property transferred to the Affiant. By accepting the decedent's property, the Affiant assumes a duty to pay the decedent's debts and distribute any balance to the decedent's beneficiaries designated in the appropriate governing instrument (such as a will) or, if the decedent did not have a will or other governing instrument, to the decedent's heirs.

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