Estate-Planning Tips Handout (Session on October 17, 2018)

Disclaimer: The ideas expressed during the October 17, 2018, session should not be construed as being legal/financial advice. Rather, this moderated discussion group session is designed to be an information-sharing opportunity, enabling attendees to become more informed about the topics discussed. When doing your own estate planning, the expertise of estate-planning professionals should be sought and incorporated into your planning efforts.

Information in the following links is the source of the content that appears below the links. The reference at the end of each of the statements (C/2, for example) means that statement can be found on page 2 of the Link C below.

A— https://www.investopedia.com/terms/p/payableondeath.asp
B— https://www.investopedia.com/terms/t/transferondeath.asp
C— https://www.thebalance.com/using-transfer-on-death-accounts-to-avoid-probate-3505416
F— https://www.thebalance.com/cost-of-settling-a-trust-3505409
G— https://money.usnews.com/money/personal-finance/articles/2014/09/19/10-steps-to-writing-a-will
H— https://germanlawgroup.com/blog-estate-planning/tod-pod-account/
I— https://wealthpilgrim.com/is-this-cheap-estate-planning-tool-better-than-a-trust-for-property-owners/
L— https://www.thebalance.com/difference-between-a-will-and-a-trust-3974765

Transfer on Death (TOD) and Payable on Death (POD)

TOD—General Information

* TOD accounts take precedence over wills and revocable trusts. (C/2)
* Joint TOD accounts can be established but won’t transfer to beneficiaries until all owners die. (C/2)
* TOD beneficiaries need to be updated as your life changes, such as when a beneficiary falls out of favor of predeceases you. (C/2)
* Don’t name minor grandchildren as TOD beneficiaries because they do not have legal authority to receive investments in a TOD account. (Instead, establish a court-supervised guardianship until they are 18.) (C/2)
* All IRA, 401(k) and other retirement accounts are automatically TOD. (B/2)
As a minimum, a death certificate will be needed to begin the transfer process. (B/2)

Upon death of owner of TOD account, investments will pass directly to the beneficiaries named by the owner. (C/2)

TOD accounts can be set up for investment accounts, including mutual funds, stocks, and bonds held in a brokerage account. (C/1)

Some states recognize TOD deeds, such as real estate. (C/1)

As the owner of the account assets, you can do whatever you wish during your life and without getting permission of the beneficiary. (H/1)

To move real estate in to a TOD arrangement, you can expect to pay around $100 to have a new warranty deed drawn up by an attorney. (I/1)

For individuals with limited assets (such as a home and a couple of financial accounts), a TOD and a POB can likely accomplish what you wish to do with your estate when you pass away so that you don’t need a will nor a revocable trust. (I/2)

**Pros**

* Avoid probate. (C/1)
* TOD accounts are easy to establish. (C/2)
* Easy to open new accounts or to change existing accounts to TOD. (C/2)
* TOD accounts pass directly to beneficiaries outside of probate. (C/2)
* Allows the account holder to specify the percentage of assets each designated beneficiary is to receive. (B/1)

**Cons**

* On joint account, a TOD account won’t transfer to a beneficiary until all owners pass away. (C/2)
* Don’t name minor grandchildren as TOD beneficiaries because they don’t have legal authority to receive a TOD until reaching age 18. (C/2)

**POB—General Information**

* POD designations take precedence over wills. (A/2)
* POD deals with a person’s bank assets, unlike the TOD that deals with stocks, bonds, mutual funds, or other investment assets. (A/2)

**Pros**

* Avoid probate. (A/1)
* Owner can increase his/her coverage limit under the FDIC regulations. (A/2)
  
  On checking and savings accounts, standard coverage limit for FDIC insurance for an individual at a particular financial Institution is $250,000.
  
  But with POB, the limit of FDIC insurance increases to $1,250,000 for up to five accounts where each account has a different named beneficiary. (A/2)
* Some states allow an unequal amount payable to different beneficiaries. (A/2)
* Other states require equal distributions to beneficiaries. (A/2)
Cons

*You can specify that a beneficiary distribute the account assets to others after your death, but he/she is under no legal obligation to follow you wishes. (H/1)
*If one of your beneficiaries passes away before the distribution of the assets, this can raise a legal issue as to what happens to his/her portion of the assets. (H/2)

*If the owner of the assets becomes incapacitated during his/her life, the beneficiaries of the assets will not have access to the funds while he/she is still living. (H/2)

Living (revocable) trusts

Living Trusts—General Information

*A trust is a pool of assets held for the benefit of a third party (beneficiary). (E/1)
*A successor trustee oversees the disposition of the assets to the beneficiary. (L/1)
*The successor trustee step in if the grantor becomes mentally incapacitated. (L/2)
*Assets remain in the trust until some specified event, such as the death of the person who had the trust created. (E/1)
*Person who had the trust drawn up is known as the settler or the trustee. (E/1)
*A trust goes into effect as soon as it is signed. (L/1)
*A living trust governs and distributes any property included within it. (L/1)

Pros

*One’s estate settlement can be kept private. (D/1)
*Enables one to avoid the cost of probate. (D/1)
*If you have property in another state other than your state of legal residence, the living trust allows you to avoid going through probate in that state. (D/1)
*More efficient than a will (E/1)
*Gives you more control over how the beneficiary receives the assets. (E/1)
*A trust can continue to hold property for the benefit of certain beneficiaries, such as minor children, until they reach a certain age. (L/1)
*Provisions for a disability can be written into a trust. (L/2)
*Once the revocable trust is signed, beneficiaries can begin receiving the benefits of the trust while the grantor is still alive (J/4)

Cons

*Have to re-title all of your property so it is owned by your trust. (D/1)
*A spillover will is used to cover your property that you haven’t re-titled in your trust’s name. (D/1)
Some people think that for this reason, the living trust option for estate planning is more costly than the more traditional will. (D/2)

*Using a trust—Less than 1% to as much as 5 percent of the value of your assets. (F/1)
*Using a will—Can range anywhere from 3% to 8% of the value of your Assets. (F/1)

*Does take some time, effort, and money to set up. (F/1)
*If you decide to revoke the trust at some point, there are steps you must take to revoke it. (F/2)

### Wills

**Wills—General Information**

*A will does not go into effect until after the death of the testator. (L/1)
*A will is a legally binding statement as to how the testator wishes his estate to be distributed after his/her death. (E/2)
*Once the will is created, you need do nothing to it unless you decide to change it. (E/2)
*A will only pertains to the property owned in the testator’s sole name, including interests in property such as tenancy in common. (L/1)
*Although there are a number of DIY options for preparing a will, there are many opportunities for making mistakes, which can be very costly to the testator’s estate. (G/1)
*In the will, you will need to identify the name of the executor of the will. (G/1)
*You will also need to identify the name of guardians for minors for whom you have legal custody. (G/1)
*If you decide to treat some heirs differently than other heirs (such as your children), you need to explain the reason for doing so in your will. (G/2)

**Pros**

*Revoking a will is easier and more simple than revoking a trust. (E/2)
*Unlike the revocable trust, a will effectively plans for the caring of minor children or grandchildren for whom one has legal guardianship. (I/4-M/1)

**Cons**

*Probate costs that you do not have with a revocable trust. (E/2)
*Some wills result in a long, drawn-out court challenge among testator’s heirs. (E/2)
*Wills become a matter of public record once they are submitted to the court for probate. (L/1)
Wills do nothing to plan for the testator’s mental disability, which means his/her loved ones have to go to court to ask that a guardian be appointed to handle his/her affairs. (L/1)