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Three Ways to Go.

Dying is never a top ten subject of conversation. That said it is the great common denominator. Hank Williams knew this. After you're gone what happens to your stuff?

Over your lifetime you may have accumulated a lot of stuff. A house. Retirement monies. Vehicles. Maybe life insurance or rental property. Perhaps a business. How your assets pass through your estate to your heirs makes a difference.

When you die there are three ways for your estate to transfer to your heirs. By contract. By probate. By trust. In many cases it is some combination of all three that come into play before an estate is settled.

How your property passes matters. The ramifications vary with respect to expense, privacy and the time it takes to complete the transfer. Part of planning your estate is deciding which combination of strategies is optimal for your goals for your heirs.

A contract is a binding document in which two parties have agreed to act or perform in a certain way. Beneficiary arrangements for life insurance or retirement plans are examples of property passing by contract. Owning property jointly with rights of survivorship is another contractual transfer where ownership passes to the survivor. Contractual transfers are private, often rapid and usually free.

Transfer on death arrangements are often overlooked but this is a terrific way to avoid probate. For non-retirement accounts a Transfer on Death or TOD arrangement creates a contractual relationship with the account custodian to add beneficiaries to your account. Banks, credit unions, and investment companies can all add a TOD arrangement to your account.

You probably have heard about probate. It comes from the Latin root to prove and is he process of proving ownership and claims to an estate. Probate is a legal process that is public, time consuming and has an expense to it. If you have a will or if you don't you will go through probate. Dying without a will your state has one for you. The intestate statues will dictate the transfer of an estate where there is no will present. These laws vary from state to state and are for all intents and purposes become your instructions to the court for how your estate is to be passed to your heirs. Having a will means having control of the instructions for the court.

Once the court has their instructions via your will or the intestate statutes then the process begins. Notices must be published in newspapers to notify potential creditors so that claims may be made against the estate. Local laws dictate how long creditors have to make a claim against the estate. Once the time has elapsed the court supervises and signs off on the distribution of the property according to the instructions they are using. With probate the expenses for attorneys and court fees can add up and may be five percent or more of the probable estate, or the property that passes through probate. When it's all done it becomes a matter of public record. Anyone can go to the court house and view the probate records to see who got Grandma’s china. True story.

Under looked as a benefit of probate is the termination of any future liability. When the court closes the estate future claims cannot be made against the assets of the estate. If you are in an occupation with significant potential liability exposure the advantage of limiting claims against the estate must be weighed against the costs, public nature and time of probate.

Lastly there are trusts. Trusts come in a wide variety of flavors each with a specific purpose or goal. Distilling any trust to its basic elements and you end up with a legal entity that can own property, hire services and borrow money. Every trust has a grantor or the person(s) who establish and fund the trust, a trustee who administers and manages the trust, and at least one beneficiary who is to somehow, someday, perhaps benefit from the trust. For purposes of avoiding probate you will want to consider a revocable living (inter vivid) trust. Mechanically you establish a revocable living trust and fund it by re titling your assets in the name of the trust. As the grantor you make yourself the trustee. This gives you the right to manage and dispense of trust property as you see fit. As the grantor you also name a successor trustee who has to follow your instructions should you be unable to act as trustee.

Obviously there are benefits to avoiding probate. Depending on the size of your estate and your goals it may make sense to spend the money to set up and fund a trust. Keep in mind that your trust has a life expectancy and during its lifetime it will have to probably make distributions to the beneficiary and file a tax return annually. Now just like us a trust will die someday. Trusts must be liquidated twenty-one years after the death of the youngest named beneficiary. If you have grandchildren or great grandchildren named in the trust this may be a long time. At liquidation the remaining beneficiaries of a class (descendants, charities, etc.) receive the remaining trust property.

Value exists in each of the three methods of transferring your estate. Probate with its finality in the right circumstances may be the best course. Contracts can be incredibly creative from beneficiary arrangements to buy/sell agreements and if properly planned can facilitate a rapid and low cost transfer. Using a living trust to avoid probate is especially practical if you own property in multiple jurisdictions where there would be a probate in each locale. Working with a team of financial, legal and tax professionals who are familiar with your goals, objectives and assets is the best way to determine which course of action is most appropriate for you and your situation. That about covers it. The big three when it comes to transferring your estate to your heirs.

Except what if you could leave a perpetual or immortal legacy? Corporations and Limited Liability Companies if well run and planned may in theory live on in perpetuity. For planning situations where a corporate/LLC entity is an optimal strategy to consider you should always consider qualified professional legal assistance. Consider two quick examples of how these might work in real life. Family vacation homes can be transferred to a LLC. Shares of the LLC could be gifted during your lifetime. Any shares remaining in your estate may be transferred via probate, trust or contract with proper planning. One other example would be to establish a private foundation (501c3 non profit corporation) to further your philanthropic goals across generations of your descendants. Your foundation may be funded by gifts during your lifetime; you may deduct contributions of up to 30% to your foundation. Additionally you may find your foundation by a bequest at your death from your trust, as the beneficiary of an account or per your instructions in your will.

There are many things to consider when looking at your estate plan and this hasn't even scratched the surface on life's other common denominator: taxes. Working with a financial planner or consultant can help you to clarify your goals for your estate, what special considerations may need to be addressed for your beneficiaries, and how various strategies may work financially.

Your estate plan like all of your planning begins with you and your goals. Thinking about this world without you in it is a difficult thing for many people. In building your plan picture what you want for the people you love. Then build and implement your plan. Finally, and this is important, try not to die for a good long time. People agree this world is better with you in it.

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