

HumbleDollar

Courtside Seat

Robert C. Port | December 12, 2017

EVERYTHING I KNOW ABOUT PERSONAL FINANCE I learned in court. As part of my law practice, I represent individuals in estate, trust, and probate disputes. Many of these cases have common themes that teach important lessons about personal finance—lessons that aren't covered in the usual commentary about saving for retirement, paying off credit card debt, and so on. In particular, six crucial lessons stand out.

Lesson No. 1: Know where your assets are. Over a lifetime, we can accumulate bank and investment accounts at various firms, as well as retirement accounts from a variety of past employers. Other illiquid assets, such as cars, collectibles, real estate, and partial ownership of a family business, are often part of our accumulated wealth. I am regularly amazed at how many people have no idea what assets they have, where they are located, or how they're titled.

Lesson learned: Organize your assets so that they are easily accessible—and, more important, understandable—by not just you, but also your executor after your passing. Consider consolidating accounts at one bank or investment firm. Create an inventory of what assets you have and where they are located. Make a list of electronic access codes—usernames and passwords—for your online accounts.

Lesson No. 2: Wills and trusts are not just for the wealthy. A properly written will specifies what happens to assets that are subject to probate. It ensures that these assets are distributed as you intended. If you have minor children, a will should also direct who should be their guardians, and who will manage any money or property left for their benefit.

Meanwhile, a trust can help ensure that your assets are managed by a trustee of your choosing. It can make sure your money is properly used for the support of the beneficiaries you identify, such as minor children, adults with special needs, and adult children who might not be able to properly manage money.

Lesson learned: If you don't have a will, state law will direct how your assets are distributed. Each state's laws are different. These laws provide for a set distribution hierarchy that generally makes intuitive sense—for example, first to

the spouse and children, then to grandchildren if no surviving spouse or children, then to parents of the deceased, and so on.

Rather than leaving your assets to be distributed according to a state formula, wouldn't you rather have your assets distributed as you want? And, if appropriate, wouldn't you want the opportunity to create a trust and put in place a trustee you select to manage assets for the benefit of beneficiaries you choose?

Lesson No. 3: Check your beneficiary forms. Many assets pass outside probate, including life insurance and retirement accounts for which a beneficiary has been designated. When was the last time you reviewed those beneficiary forms to make sure they reflect your wishes? Will your ex-spouse get \$1 million in life insurance proceeds because you neglected to change the beneficiary after your bitter divorce? Has a later born child or a stepchild been inadvertently omitted as a beneficiary of your 401(k) or rollover IRA?

Lesson learned: Regularly review all insurance policies, annuities, and bank, retirement, and brokerage accounts, to ensure that the beneficiary designations reflect your current wishes. Be sure to have your accountant or estate planning attorney evaluate whether there are any tax consequences resulting from your beneficiary designations.

Lesson No. 4: Carefully evaluate who is best suited to be executor of your estate and trustee of any trusts. Many people simply default to picking the oldest child, the child who is a lawyer or accountant, or the child who seemingly has the most business sense. Others choose their lawyer, accountant, or financial advisor. None of those choices is necessarily improper.

Still, ask yourself: Will you accentuate or foment sibling rivalry by choosing one child to be executor or trustee? Does the person selected have the honesty, diligence, and competence to manage financial and other assets? You will be doing your heirs no favors if you choose the wrong person and they end up in expensive legal disputes because assets were mismanaged, wasted or—in a worst-case scenario—stolen.

Lesson learned: The selection of an executor for your estate, and the trustee of any trusts, is a critical component of your financial and estate planning. Does the person have the skill set—not only technical skills, but also people skills—to faithfully execute this position of trust? While it adds a layer of cost, a professional corporate trustee—such as a bank's trust department or an independent corporate fiduciary—is sometimes the best solution.

Lesson No. 5: What does your power of attorney say and who holds it? A power of attorney (POA) lets somebody act on your behalf if, say, you're incapacitated. It has sometimes been referred to as "the most effective burglary tool since the crowbar." A general POA gives the holder (the agent) broad powers to do almost anything the person granting the POA (the principal) could do.

Common abuses include selling, transferring, gifting, or mortgaging the principal's assets and property; changing beneficiary designations for life insurance, retirement accounts, or investment accounts; and defeating or impairing the principal's estate and tax planning by selling, transferring, encumbering, or gifting assets that were intended to be given to a specific recipient.

To protect yourself, ponder how each POA power could be abused. Consider appointing one or more co-agents who must unanimously consent to any action taken under the POA; limit the powers only to certain acts or transactions; and require prior notice to heirs, beneficiaries, or independent professional advisors before certain financial transactions are made.

Lesson learned: Before granting a power of attorney to anyone, understand the scope and extent of the powers you are giving. Will the person or persons who hold the POA only exercise the power in your best interest? Consider spelling out the agent's duties and responsibilities, such as keeping the principal's property separate from that of the agent; keeping a contemporaneous record of each transaction; limiting gifting powers; requiring proper title for accounts and property; and prohibiting the agent from engaging in "self-dealing" or conflict-of-interest transactions.

Lesson No. 6: Communicate, communicate, communicate. In the cases I litigate, it is often clear that a major precipitating factor is the failure to communicate. It might be a failure by the deceased to explain his or her plans before death, or a failure by the executor or trustee to communicate with heirs or beneficiaries.

Talking with family members about our money makes most of us uncomfortable. Discussions about what will happen to our assets at our death are even more difficult. But it is often better to discuss these matters now. After your death, you don't want beneficiaries surprised and disappointed at their inheritance. You don't want a sibling, uncle, lawyer, or accountant thrust into the role of executor or trustee without much knowledge of what the role entails. And you especially don't want this happening at a time when all are grieving.

Lesson learned: After a loved one's death, disputes often arise when beneficiaries learn that an inheritance isn't what they expected. Candidly explaining the rationale for your estate plan—why there are unequal distributions among children, why assets are to be placed in trust, or why the majority of the estate was left to charity—can often reduce the legal jousting that might otherwise occur after your passing. Similarly, executors and trustees will greatly reduce the risk of disputes if they are candid and transparent with heirs and beneficiaries.