

Remedying a Common Estate Planning Error: Improper Titling of Assets

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is brought to you by

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As elder law and estate planning professionals, when the attorneys of Hook Law Center meet with you for the first time, they ask you to bring in the most recent statements for your financial accounts, deeds to your real property, and titles to your automobiles. We are often asked why this much information is needed, when all the client wants is a simple will or a power of attorney. We request this information in order to provide you with the most comprehensive planning possible; it allows us to make better recommendations for you and identify and resolve any potential issues which would otherwise thwart your estate planning.

Your will or trust generally does not govern disposition of the following:

1. Any real property or accounts that may be owned jointly by you and another with the right of survivorship;
2. Any real property with a transfer on death designation;
3. Any account that may have a payable on death or transfer on death designation;
4. Retirement accounts, 401(k) plans, 403(b) plans, and IRAs;
5. Survivor benefit plans; and
6. Life insurance policies.

The assets in these accounts, plans and policies will usually pass to the surviving co-owner or the designated beneficiary of these accounts, plans, and policies. Beneficiary designations usually override the disposition of your assets as provided in your will or trust, as any accounts, plans, and policies that designate a specific beneficiary will be payable to that beneficiary. Frequently, beneficiary designations are made at the time the account was opened, but are later forgotten. As a result, we often see designations in place for deceased or divorced spouses. When we meet with you, we like to review your accounts, plans, and policies and their beneficiary designations to ensure that they are consistent with your estate plan. The more information you provide for us in this regard, the better we can assist you.

Often, a single, elderly client will name one of her children as joint owner on a bank account, with the intent that the child will help pay her bills and manage her finances. At her death, the client would like that bank account to be divided

Remedying a Common Estate Planning Error: Improper Titling of Assets – Cont'd

evenly between her three children, according to the terms of her will. Because one of the children has been named a joint owner on the account, however, this may mean that only the named child will receive the remainder of the bank account on her mother's death. The other two will receive nothing, because the titling of the bank account will override the disposition of assets in the will. In many situations, a better alternative to this arrangement would be to leave the mother as sole owner of the account, have her sign a power of attorney naming the one child as her agent, to help her manage her financial affairs, and make the account "payable on death" to all three children. This would better fulfill the mother's intentions while ensuring that all children are treated equally upon her death.

Another common mistake relates to the titling of real property. An unmarried couple who purchases real property together may intend that at the death of the first partner, the second partner will own 100% of the property. They assume that because both names are on the deed to the property, this will happen automatically. However, if the deed does not specifically provide that the two own the property "with right of survivorship," the first partner's one-half interest in the property will pass according to the terms of his will, or if he has no will, to his heirs as determined by Virginia law. This mistake is easily corrected by preparation of a deed transferring the property into the name of the two partners as joint owners with right of survivorship.

These are just two examples of ways in which improper titling of assets can jeopardize an estate plan. Don't make the mistake of assuming that just because you have a will in place, everything you own will pass according to the will. Allow the attorneys at the Hook Law Center to do a comprehensive review of your assets to ensure that their titling and beneficiary designations complement -- rather than contradict -- your estate plan.



Opossums – America's Marsupial – Part 1

Hook Law Center: Kit Kat, can you tell us anything about opossums?

Kit Kat: Yes, I certainly can. There's tons of stuff to know about these cute little creatures that are North America's only native marsupial. First off, these creatures that are about the size of a large housecat have 50 undifferentiated teeth--one of its marsupial characteristics. Its scientific name is *Didelphis virginiana*. Apparently, opossums have roamed North America since the age of the dinosaurs. Now that's staying power and adaptability of which few other species can boast!

Even more interesting is their reproductive cycle. When they are born, they are hairless and blind. They are really tiny--about the size of a honeybee-- with a gestation of less than 2 weeks. Their mother has around 24

babies or joeys, but only 13 feeding glands. So right from the beginning, there is a struggle for life. They also have to make their way from the birth canal to her frontal pouch. These little creatures are real survivors!

If they make it to adulthood, the struggle continues. The average lifespan is only 3 years, so obviously many fall victim to predators. My mom's collie, which she had as a child in New Jersey, caught opossums regularly in their backyard. She observed that they are really slow-moving. So to counter these drawbacks, they are able to reproduce at the age of 10 months. They can have multiple litters in a year. Also, they are nocturnal, so that cuts down somewhat on who is out and about to prey on them. Next week, I will continue this discussion about the unique opossum.

(http://cityroom.blogs.nytimes.com/2014/01/24/opossums-are-unloved-yet-hard-to-resist/?_php=tr...)

Upcoming Events

- Andrew H. Hook, will begin his series of speeches at The Ballentine with *Long Term Care Planning Part I (Estate Planning)* on **February 17, 2014**. This will be included as part of their family night, so dinner will be from 5:00-6:00PM and the presentation will be from 6:00PM-7:30PM. The address to the facility is 7211 Granby Street, Norfolk, VA 23505.
- United Way of South Hampton Roads is where Shannon Laymon-Pecoraro will be presenting some benefits and strategies for Estate Planning on **March 3, 2014**. This presentation starts at 6:00pm and the address is, 2515 Walmer Road, Norfolk, VA.
- Hook Law Center is a sponsor of the American Heart Association Ball which will take place on **March 8, 2014** at the Norfolk Botanical Gardens. For event information, contact Stephanie Phipps at 757-628-2608
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on **April 12, 2014**.



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