Client and Friend Newsletter

January 2024

272 Hardie Ave SW, Renton, WA 98057 Phone: 425-251-8880
Email: info@bethmcdaniel.com Web: www.bethmcdaniel.com

LAW OFFICES OF BETH A MCDANIEL
Professional Limited Liability Company

Happy New Year from the Law Offices of Beth A. McDaniel, PLLC.

We wish you and yours a safe, happy, and healthy 2024. If there is anything that we can do to assist you, please let us know. Did you know . . :

- We maintain attorney referral lists for clients to best ensure clients

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Employee Spotlight

This month we feature legal assistant Terra Rodriquez.

Terra assists clients in the areas of probate and guardianship. Her competency with numbers is a tremendous help in the preparation of annual, triennial, and final accountings in these areas.

Originally from Texas, Terra currently resides in Bonney Lake, Washington.

In her free time, she enjoys visiting the local arboretums, parks, zoo, and restaurants.

Terra is reachable directly via e-mail at terra@bethmcdaniel.com or (425) 336-0622.

You Have an Estate Plan: Now What? By Beth A. McDaniel, JD, CELA

For those of you who have recently executed or updated an estate plan, congratulations. That is a commendable achievement that few Americans complete. Related, I often reflect on Stephen Covey's..

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- ...seeking assistance in other practice areas of law, have better access to trusted legal professionals. We understand that the most effective way to connect individuals with the right lawyer often involves the power of 'word of mouth'. If you have had a good experience with an attorney in another area of law, please let us know so we can have the opportunity to add the attorney to our referral list.
- As part of our ongoing commitment to fostering client understanding and satisfaction, we generally refrain from charging clients for answering questions about their estate planning documents. We want our clients to understand their documents and make sure that their documents meet their estate planning objectives. Please refer to the below article regarding the ongoing nature of estate planning, 'So you have an estate plan: now what?'
- This newsletter, which offers general information on a variety of topics, is provided at no cost to you and is accessible to all who express interest. To join our newsletter list, simply go to our website: bethmcdaniel.com.

Disclaimer: this newsletter is informational only and should not be construed as legal advice.

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Cont: You Have an Estate Plan: Now What?

...'Time Management Matrix' (AKA Eisenhower's Urgent-Important Principle). This Matrix/Principle divides activities into four quadrants:

- urgent and important
- not urgent but important
- urgent but not important
- and not urgent and not important.

Interestingly, estate planning typically falls into the 'not urgent but important' category, making it fall behind more 'urgent' activities – even if those 'urgent' activities are 'not important.'

If you have not executed an estate plan – or if you have an estate plan which needs overdue updating - please do not be too hard on yourself. You are not alone. According to caring.com's 2023 Will Survey, two-thirds of Americans lack any type of estate planning document. The estate planning process takes time. In fact, it has been noted that on average it takes a person four years from the time of the initial decision to make a Will, to the actual execution of a Will.

For those who have executed a Will or Trust which is current and fully expresses your wishes, it would be ideal for me to be able to say these estate plans are completed. If only it were that simple. In fact, achieving a successful estate plan requires additional initial work and periodic reviews. Without these additional steps, your established estate plan may not be as effective as anticipated. Here are additional steps which need to occur after a Will or Living Trust is executed:

Check Payable on Death Designations/Transfer on Death Designations. Shortly after executing a Will or a Trust, a thorough review of

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every asset should be made to identify whether there is a payable on death ("POD") or transfer on death ("TOD") designation on an asset which needs to be updated or removed. I often think back to a client who intended to leave everything equally to her nephews. In fact, I made a trip to her assisted living facility to help her update her documents shortly before her death. You can imagine the surprise of her personal representative to discover, upon my client's death, that a savings account containing a significant sum of money intended to help cover my client's several months of anticipated care costs, had a pre-existing payable on death (POD) designation which named only one nephew as the sole beneficiary of the account. Prior to the transfer of the significant sum, there was less than $2,000 in that account. Unsurprisingly, the nephew who was named as POD beneficiary of the savings account went to the bank and withdrew the money as soon as he learned of the account's existence.

If you serve as the agent or trustee for an older adult, it is advisable to conduct regular reviews of that adult's accounts. Specifically, review access, ownership, and POD designations. Unfortunately, we periodically assist clients with estates where our client is surprised to learn a family member had been 'added' to an account which belonged to the decedent. This discovery is often made after the funds were withdrawn by the family member and the account closed. As a side note, there is unlikely never a need for any immediate or extended family member to be provided with a death certificate immediately upon availability.

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Even if the POD/TOD designation intends to distribute the asset equally to your children following your death -- mirroring your estate plan -- it may still be prudent to remove the POD/TOD so that the disposition of this asset is instead completely controlled by your Trust or Will. There are a several reasons for doing this: first, your executor/trustee (sometimes referred to as 'fiduciary') may require access to this account for payment of administrative expenses, liabilities, or taxes. Second, an estate plan can address contingencies that a POD/TOD designation cannot. For example, if your estate plan states that if one of your children predeceases you that child's share goes to the child's children (your grandchildren), this will not happen with a POD/TOD designation as that asset would be divided among your surviving children instead. Additionally, having such an asset be controlled by a Will or Trust provides a more effective method to provide for a minor, a disabled individual, or an irresponsible beneficiary (further details on this topic can be found below).

Review beneficiary Designations. It is important to regularly revisit beneficiary designations for assets like life insurance policies, annuities, and retirement accounts to assure their accuracy and relevance. For these assets, it is important to not only have a primary beneficiary, but also to have a contingent/secondary beneficiary to receive the asset should the primary beneficiary predecease the asset's owner.

IMPORTANT: It is also important to expeditiously rollover any retirement accounts left to a surviving spouse into the surviving spouse's name or into the name of any alternate

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beneficiaries, which are usually the children, especially if the survivor spouse's health is not optimal. Failure to do so may cause added complications should the surviving spouse die prior to the establishment of the rollover IRA. We recently had such a case in which the surviving spouse died before a rollover IRA was established. In this specific case, the administrator of the IRA required a court order before it would allow the children to establish inherited IRAs.

When selecting beneficiaries for these types of assets, its important to avoid directly naming a disabled individual, a minor beneficiary, or a historically irresponsible individual as a beneficiary. If a disabled individual is named, he or she will likely be at risk of losing their needs-based benefits due to the beneficiary designation. Here, if the beneficiary is under the age of sixty- five, a special needs trust will have to be established to hold the disabled beneficiary's share, to be distributed for their benefit. After the special needs trust is established, upon the disabled beneficiary's death, the trust's assets will be subject to recovery by the estate or social security administration. If the disabled beneficiary is over the age of sixty-five, he or she will likely lose any needs-based benefits upon receipt of his or her share of the asset. Then, once the funds designated for the disabled beneficiary are depleted towards care/living expenses, the disabled beneficiary will need to reapply for benefits.

If a minor is a named beneficiary, a court-appointed conservator will likely be required to manage the minor's share. Here, the conservator would have to provide ongoing accountings to the Court. Upon the minor's 18th birthday, the conservator would

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submit a final accounting to the Court for approval. Only once the accounting is Court approved are the funds are paid directly to the beneficiary.

Naming a historically irresponsible individual as a beneficiary, of course, poses the risk that their designated share will quickly be depleted in a manner that may not be in the beneficiary's best interest.

Please know it is possible to leave all or a portion of a life insurance death benefit, annuity, or retirement account to a minor, disabled individual, or a historically irresponsible beneficiary by directing their portion to a trust which you would establish for the beneficiary in your estate plan. If you create a special needs trust for a disabled individual in your Will or Trust, that trust is not subject to recovery by the estate or the social security administration upon the disabled beneficiary's death (important note: any special needs trust to your spouse can only be created within your Will). Alternatively, a minor beneficiary's share may be left to a custodian directed to establish a custodial account under the Uniform Transfer to Minors Act. Here, the custodian appointed through your estate plan would manage the account for the minor up to age twenty- five.

Fund Your Trust. If you have a revocable living trust, please remember that for it to effective, it must be 'fully funded.' Essentially, this entails re-titling any asset which would have otherwise gone through probate, into the trust name, or naming the trust as the asset's beneficiary. Assets which should be retitled into the trust name include,

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but would not be limited to, real estate, securities (stocks and bonds), brokerage accounts, certificates of deposit (caveat: retitling an existing certificate of deposit may trigger early withdrawal penalties); business interests, royalties, copyrights, patents, and trademarks; oil and mineral rights; and accounts receivable. While personal property, which includes vehicles, is automatically in the trust, it is advisable to retitle collectible vehicles, which will not depreciate in value, into the trust's name.

Assets that can designate a trust as a beneficiary include retirement accounts (with the caveat that the Trustee must furnish the trust administrator with a copy of the trust and beneficiary information no later than October 31 of the year following the account owner's date of death. Failure to do so may curtail the ability to 'stretch' the IRA beyond five years), health savings accounts, working bank accounts, and UTMA accounts.

Assets which may go into the trust, if permitted by agreement, include partnership and LLC interests.

Storing Estate Planning Documents. I have previously written about where to store estate planning documents. In addition, there are of course many other informative articles available about important document storage. Here is a link to one which aw published in the December 31, 2023, Seattle Times: ttps://www.seattletimes.com/business/millennial-money-would-your-documents-survive-a-disaster-what-to-protect-and-how-to-do-it/.

Clerk's Will Repository. An option for Will storage not discussed in the recent Seattle Times's article is

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Washington's Will Repository. Here, for a one-time $20 fee, you can store your original Will with a Washington Superior Court Clerk. Once a Will is in the repository, no one else can access your Will while you are alive without a Court Order. While you are alive, only your name and birth date are publicly listed in the court records. Once the Clerk is notified of your death, your Will becomes a public document, as all Wills do during probate. There are a few additional, possible charges associated with the repository. For example, there is an additional $20 charge to add a Codicil to your Will within the repository.

There are many reasons to use the Will Repository, such as the one-time fee, in contrast to a safe deposit box, which likely requires an annual fee. Additionally, it helps protect your privacy and guards your Will from being lost or destroyed. In accordance with the King County Clerk's website, there is no fee for your removal of the Will or replacement of the stored will with a more current Will.

Reasons to not use the Will Repository include your needing to remember to replace your Will in the repository once your former Will is updated. Also, it is not beneficial should you move out of state (here, your named personal representative would need to seek a court order to remove it from the registry).

Also, a Will may have some relevance during your lifetime as an appointed, acting agent under a General Durable Power of Attorney has a duty to 'preserve your estate plan.' According to Washington State law, one of the many duties of agents under a Durable Power of Attorney is to attempt to preserve an estate plan, to the extent actually known by the

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agent. Preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
(i) The value and nature of the principal's property;
(ii) The principal's foreseeable obligations and need for maintenance;
(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
(iv) Eligibility for a benefit, a program, or assistance under a statute or rule.
Note: An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan (RCW 11.125.140 (2)(f) and (3)). In summary, if I were to represent an agent, and was aware that the principal had a Will stored in the repository, I would recommend a court order be obtained to provide my client with an opportunity to review the original Will. This exercise, of course, incurs additional expense.

In conclusion, during my early years as an attorney, I had the belief that the estate planning documents I prepared for clients truly needed to be flawless, as they would endure forever. However, life; including relationships and assets, is of course subject to constant change. To best stay abreast of these changes, estate planning documents should be reviewed at least once every five years. Additionally, review should be made upon the occurrence of a life event such as a birth, disability, marriage, or death. Furthermore, if a revocable living trust is part of an estate plan, ongoing diligence needs to occur to best ensure the Trust truly accomplishes its intended purpose.

If you have questions or wish to make an appointment, please contact our client care specialist, Margo Passeau, at (425) 296-3121. Here's to a great 2024!