

Beneficiary Designations

And Your Estate Planning

Unruh Turner Burke & Frees



By Douglas L. Kaune

610-933-8069

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Remember: Your Beneficiary Designations Or Account Registrations Might Need To Be Updated!

INTRODUCTION:

The preparation of a Will or Trust document should not be the final step in making sure that your estate plan is fully established. Beneficiary designations on assets such as life insurance, IRA'S, 401K's, annuities and pension/profit sharing plans will take precedence over directions set forth in a Last Will and Testament or Trust Document. Jointly owned assets will also transfer to the surviving joint asset owner regardless of the beneficiaries designated under other estate planning documents. It is very important that individuals coordinate their beneficiary designations and ownership titling with the wishes set out under their Will or the Trust(s) created during their lifetime.

The Last Will and Testament only serves to transfer those assets which become a part of a person's probate estate. A probate estate is made up of assets that were in a decedent's own name at the time he or she passed away or those assets that were paid to the estate after the date of death. Because the beneficiary designation or joint ownership of an asset will cause a transfer outside of the probate estate, these assets will not be distributed in accordance with the Will unless you take the necessary steps to coordinate these two separate facets of the planning process.

The Revocable Living Trust is a document used by clients to help avoid the need for probate transfers at the time of their death. The Revocable Living Trust will only serve to transfer assets that are titled in the name of the trust prior to death or which have been directed to the trust after their death. **Note:** You cannot transfer ownership of IRAs, 401(k)s or Retirement Assets to a revocable trust during your lifetime.

If you have beneficiary trusts established under your Will or Revocable Trust benefitting certain individuals, it is imperative that you consider revising the beneficiary designations on life insurance and potentially Annuity, IRA, 401K and other similar accounts to pay to the trusts and not to the individuals you might want to benefit from the trust(s). Any trust you designate as a beneficiary at your death

MUST have the special powers described in Section A.1. in this document. Common beneficiary trusts you might have under your documents:

- A trust for your spouse created for potential use of your federal estate tax exemption, creditor, divorce and asset protection, or
- A trust for young children appointing a Trustee to watch over assets until they reach a certain age at which you believe they can properly handle assets. At that appointed age you have determined there is no risk that they could lose assets to divorce, creditors or law suits, or
- A trust created for your children that is intended to help protect their inheritance for their entire lives. This trust is tailored to provide divorce, creditor and asset protection for your children through adulthood, or
- A trust created for a special needs beneficiary, or
- A trust of any other kind for any other reason.

Regardless of who the trust is created for or the purpose of the trust, the beneficiary designations and/or asset titling will have to be modified should you want these assets to pass into the trust(s). Again, absent the necessary change, the assets will pass outside of the trust provisions and directly to individuals named as beneficiaries.

A. BENEFICIARY DESIGNATIONS

There are some perils when modifying the beneficiary designations. Below are some particular issues for you to be aware of and steps that you should take to make sure that the modification of beneficiary designations on your various accounts and assets is successful.

1. IRA, 401k, Retirement Assets and Qualified Plans:

Please note that very specific trust and beneficiary designation language must be used to gain beneficial “stretch” treatment for IRA’s, 401k’s, Retirement Assets and Qualified Plans paid to trusts. The term "stretch" is used when referring to a beneficiary's ability to take small annual withdraws from an IRA or qualified plan asset over a maximum life expectancy period. You can now pay IRA, 401k, Retirement Assets and other Qualified Plans to trusts for your beneficiaries while maintaining the maximum "stretch" allowed by I.R.S. provisions. This is a very technical tax issue and

our trust provisions are tailored to allow for this "stretch" of IRA and Retirement Assets. Additionally, our office will provide suggested language to fit documents we prepare for you, but it is your responsibility to take the final step to obtain, fill out and submit the change of beneficiary forms.

******* Important Notice ******* Your named beneficiary, whether it be an individual or a Trustee of a trust, will have to follow very specific steps to properly claim a beneficial interest in an IRA, 401k or other Retirement Asset. It is very important that they seek professional assistance when the time comes to claim the asset interest. The negative income tax consequences resulting from not following the necessary steps for making a beneficiary claim can be significant. Please advise them of their responsibilities in advance so that they may be prepared.

2. Beneficiary Designation Attachments:

IRA, 401k, life insurance, annuity and other beneficiary designation forms are notorious for providing small spaces that make it difficult to insert proper trust beneficiary language. Don't be afraid to simply write "See Attached" in the designation form and then prepare a separate beneficiary designation attachment. A sample Beneficiary Designation Attachment has been included at the end of this report. The sample attachment is by no means meant to be universally used and should not be taken as a one size fits all approach. Regardless, the attachment you ultimately prepare for your own beneficiary designation should be submitted with the company's form and both should be signed and dated.

3. Get a Receipt:

We caution every client to submit the beneficiary designation as follows:

- a. U.S. Postal Service, return receipt requested.
- b. With an extra copy and a request that it be time stamped and returned in a return envelope provided.

We want to avoid a case in which the company does not process your change request. No matter the reason, this could have severe consequences.

4. Get A Written Summary Of The Designation:

In keeping with number 3 above, we tell clients to call the company two weeks after submitting the change form to request a written summary of beneficiary designation. This will help you to feel secure that your request was processed with the correct language.

5. Keep All Beneficiary Designation Forms With Your Planning Documents:

We have found that people generally take good care of their will and trust documents. However, they do not take care of their completed beneficiary designation forms. Think of these designation forms as mini-wills! They are important! Keep the designation form and the written summary as referenced in number 4 above, together with your will and or trust. We prepare a great estate planning folder or binder for all of our clients. It is a great idea to store your beneficiary designation materials with your other planning documents.

6. When All Else Fails, Get Assistance!:

Although the preparation and filing of beneficiary designation forms is something you can you do on your own, you may want to hire our firm to assist you. We do perform this service for our clients when asked, but this is not a part of the ordinary planning process. This is something that we would provide as an additional service after assessing what documents need to be prepared and filed. Typically, this service is billed on an hourly fee basis as this process can be time consuming and it is hard to determine the time expenditure in advance.

B. JOINT TENANCY AND ASSET OWNERSHIP

It is important to understand that joint tenancy ownership will also take precedence over the directions you have in your will or trust. Be aware of the following:

- If you have trusts created for your spouse or other beneficiaries, assets held jointly with another person at death will transfer to them individually and not into the trust.
- Joint ownership of assets could disrupt an intended equal distribution under your will or trust.

Please review how your assets are titled and if you have assets that are jointly owned with other individuals. If you do have jointly owned assets, make sure that this ownership designation is consistent with your estate planning intentions. If you find that a joint ownership designation will result in an unintended result, take the steps necessary to modify the ownership to insure your estate distribution meets the expectations you have set out in your will or trust documents.

C. WHO PAYS THE TAX?:

The “Tax Clause” in your Will or Revocable Trust is very important, but often overlooked. The most frequently used Tax Clause states that your probate or trust estate will pay the inheritance and estate tax associated with your passing. **Note:** If you name beneficiaries on various accounts or own assets jointly with individuals other than those named in your Will or Revocable Trust, you may need to change your Tax Clause. As a result of the assets transferring outside of your Will or Revocable Trust, the “typical” Tax Clause could cause estate or trust beneficiaries to have to pay tax on assets that other people are receiving. In this scenario, you may want to change your tax clause to state that each beneficiary pays the tax on what he/she inherits and that your estate is not responsible.

SUMMARY

We cannot stress enough that the preparation of Wills and Trusts is not the final step in the planning process. Remember, beneficiary designations and titling of assets need to be coordinated with planning done under your Wills or Trusts. At Unruh, Turner, Burke & Frees, P.C., we strive to make sure that you and your loved ones have the benefit of the best estate plan possible.

We hope you recognize that the emphasis we place on your completing and filing the change of beneficiary designation forms, as outlined above, serves to demonstrate our continued commitment to you as our clients and friends.

DOUGLAS L. KAUNE, ESQ. | DAVID M. FREES, III, ESQ. | WHITNEY P. O'REILLY, ESQ.
dkaune@utbf.com dfrees@utbf.com woreilly@utbf.com

Phoenixville Office
120 Gay Street
P.O. Box 289
Phoenixville, PA 19460
(610) 933 – 8069

West Chester Office
17 West Gay Street, P.O. Box 515
West Chester, PA 19381

Paoli Office
43 Leopard Road, Suite 103
Paoli, PA 19301