

This month we look at ways that assets can pass outside the probate process to your heirs or other beneficiaries. In the Estate Planning community we refer to these techniques as Will Substitutes because property is passed to an heir or beneficiary without a Last Will and Testament and without opening a probate estate.

The purpose of probate is to transfer title to assets passing through the probate estate to the beneficiary of a decedent's Last Will and Testament; or if no Will exists, to the decedent's heirs at law as defined in the intestate succession statute.

Transferring assets outside of the probate process is accomplished by a deed, a contract, a beneficiary designation, or other instrument.

*The Advantages of Transferring Assets Outside of the Probate Process include:*

Easy to create;

Avoids the probate process with its time, cost and publicity; and

Allows retention and control of the assets during the testator's lifetime.

*Disadvantages of Using Will Substitutes include:*

Not always easy or inexpensive to undue;

Lack of Integration with the decedent's overall estate plan;

Unintended disinheritance;

Marital deduction or credit shelter trust over funding;

Probate estate illiquidity;

Skewed responsibility for payment of death taxes;

A named beneficiary predeceases you and no contingent beneficiary is named;

Money or property is left to a minor or incapacitated beneficiary;

Transfer of your assets must conform to the dictates of a form that may be inadequate for your objectives; or

Loss of control over the management and disposition of an asset during the owner's lifetime.

### **Types of Will Substitutes**

*Jointly Owned Property With the Right of Survivorship.*

*Tenancy by the Entirety.*

*Both real and personal property can be jointly owned with the right of survivorship.*

*Pay on Death [POD] or Transfer on Death [TOD] Designation.*

*Beneficiary Designations.*

### **Reasons Why Will Substitutes Fail**

*No joint owner is named or no POD designation is made;*

*The person designated by you predeceases you and no successor is named; or*

*The person designated to receive funds POD or TOD, or as a beneficiary is under the age of 18.*

### **How to Make a Will Substitute Work for You**

*Be sure to name a primary and a contingent beneficiary when an account is opened.*

*Do not leave money to a minor child by POD, TOD or joint ownership.*

*Review your designations periodically to be certain that you listed a POD or TOD designation and that the persons named are over the age of 18.*

*Review all designations when your circumstances change. You should review your designations whenever a relative or named beneficiary dies, when you marry or remarry, or when your children reach the age of 18.*

*One or more beneficiaries can be listed for life insurance policies and pension plans. A bank account, brokerage or security can be designated to be paid to one or more persons on the death of the account owner.*

*This is a form of joint ownership with the right of survivorship between husband and wife. If one spouse dies, the surviving spouse becomes the sole owner.*

When property is jointly owned with a non-spouse, ownership passes to the surviving joint tenant or to the surviving joint tenants in equal shares if there is more than one joint tenant.