

# Wealth Transfer Planning Strategies

How you choose to have your property and assets transferred upon your death is an important decision that can have an enormous impact upon your beneficiaries and heirs. One of the key concepts to understand in Wealth Transfer Planning is how solely-owned assets are disposed of when someone dies. Solely-owned assets at the time of your death consist of property or assets that are titled in your name alone—i.e., there are no other joint owners--and for which there are no surviving designated beneficiaries.

Listed below are the 8 basic Wealth Transfer Strategies that are available in transferring your property and assets upon your death:

## (1) Not Signing a Will

Deciding not to sign a Will is, itself, a conscious choice, which will result in all of your solely-owned assets being subject to Probate. After payment of all legitimate debts, taxes and expenses, your remaining solely-owned assets will be distributed to your “heirs”, who will be determined under the Will\*\*\* that the State of Illinois has for any Illinois resident who dies without having their own valid Will in force. Your “heirs” might not be the persons you would want to inherit your solely-owned assets. The person in charge of your Probate estate will be the “Administrator”. The identity of your Administrator will be determined under the Illinois laws, and might not be the one you would have chosen. The Administrator will be required to purchase, using your solely-owned assets, an expensive commercial surety bond to ensure that he or she is honest—i.e., does not steal or embezzle. The Probate Court will appoint a Guardian of the Person for any minor children you have to take over your parental role, and will also appoint a Guardian of the Estate to manage the assets that any minor “heirs” inherit from you. In each instance, the Guardians appointed by the Court might not be the ones you would have chosen. All matters pertaining to your Probate estate, including info about your Probate assets, will be public and open to inspection by anyone. \*\*\* We have included a sample of the Last Will and Testament provided by the State of Illinois in the Resources Section of our Website.

## (2) Signing a Will

Signing a Will does not change the fact that all of your solely-owned assets will still be subject to Probate. After payment of all legitimate debts, taxes and expenses, your remaining solely-owned assets will be transferred to those of the beneficiaries named in your Will who survive you. The person in charge of your Probate estate will be the “Executor” you have nominated in your Will. If you trust your Executor, you may include in your Will a provision that waives the requirement that the Executor purchase an expensive commercial surety bond to ensure that he or she is honest. The Probate Court will appoint the person(s) you have nominated in your Will as Guardian(s) of the Person for any minor children you have. You may, and in our opinion should, include provisions in your Will that will avoid the necessity for the Probate Court to appoint a Guardian of the Estate to manage any assets you leave to any minor beneficiaries. The provisions of your Will and all matters pertaining to your Probate estate, including info about your Probate assets, will be public and open to inspection by anyone.

## (3) Signing Beneficiary Designation Forms

If you utilize this Strategy, any remaining solely-owned assets will still be subject to Probate—please see either Strategy (1) or (2) above, depending upon which is applicable. If you sign and properly process Beneficiary Designation Forms, then your Death Benefit Assets, such as life insurance, annuities, IRAs, and Retirement Plans, will be disposed of as you have specified in such Forms, and not pursuant to either Strategy (1) or (2) above, and such Death Benefit Assets will not be subject to Probate. However, if a Beneficiary you have named does not survive you, and if you have failed to name a Secondary or Contingent Beneficiary, then that particular Death Benefit Asset will be subject to Probate, and will be disposed of as described in Strategy (1) or (2) above, depending upon which is applicable.

## (4) Establishing POD or TOD Accounts

If you utilize this Strategy, any remaining solely-owned assets will still be subject to Probate—please see either Strategy (1) or (2) above, depending upon which is applicable. It is possible to establish Payable On Death accounts (sometimes also called “Totten Trust” Accounts) at banks, savings institutions and credit unions, and Transfer On Death accounts at stock brokerage firms. Since these types of accounts are titled in your name alone, during your lifetime you are the only one who has access to them. However, upon your death, each POD or TOD account will then become owned by the Beneficiary you have designated in the paperwork you signed to establish the account, will not be subject to Probate, and will not be disposed of under either Strategy (1) or (2) above. However, if a Beneficiary you have named does not survive you, and if you have failed to name a Secondary or Contingent Beneficiary, then that particular account will be subject to Probate, and will be disposed of as described in Strategy (1) or (2) above, depending upon which is applicable.

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## Wealth Transfer Planning Strategies (continued)

### (5) Utilizing Joint Tenancy

If you utilize this Strategy, all of your solely-owned assets will still be subject to Probate—please see either Strategy (1) or (2) above, depending upon which is applicable. Property and certain other assets may be titled in the names of you and one or more others as *Joint Tenants With Right of Survivorship*. By titling property or assets in this manner, you may be making a gift for Federal Gift Tax purposes to the other joint tenant or joint tenants. In addition, since each joint tenant will become an owner of the joint tenancy property or other assets, the creditors of any of the joint tenants can reach that joint tenant's proportionate share of such property or assets. If at least one of the joint tenants survives you, then upon your death, the property or assets will be owned by the surviving joint tenant, or equally by the surviving joint tenants, will not be subject to Probate, and will not be disposed of as described in either Strategy (1) or (2) above. However, if none of the other joint tenants survives you, then upon your death the property or assets will be subject to Probate, and will be disposed of as described in either Strategy (1) or (2) above, depending upon which is applicable.

### (6) Utilizing Tenancy by the Entirety

If you utilize this Strategy, all of your solely-owned assets will still be subject to Probate—please see either Strategy (1) or (2) above, depending upon which is applicable. In Illinois a married couple, or parties to a civil union, may own their principal residence (and no other asset) as Tenants by the Entirety. However, unlike property or assets owned in Joint Tenancy With Right of Survivorship, a creditor of only one spouse cannot force the principal residence to be sold, and then reach up to one-half of the net sales proceeds to satisfy the judgement entered against the debtor spouse/partner. Upon the death of the first spouse/partner to die, the surviving spouse/partner automatically becomes the sole owner of the principal residence, it is not subject to Probate in the estate of the first spouse/partner to die, and will not be disposed of as described in either Strategy (1) or (2) above. However, after the death of the first spouse/partner to die, the residence becomes a solely-owned asset of the surviving spouse/partner!

### (7) Establishing A Revocable Living Trust

If you utilize this Strategy, all of your solely-owned assets will still be subject to Probate—please see either Strategy (1) or (2) above, depending upon which is applicable. A Revocable Living Trust ("RLT") is a document that you sign, as the Trustmaker, and that one or more Trustees also sign. You may be both the Trustmaker, and either the sole Trustee, or 1 of the Trustees, and a (or the sole) beneficiary. If you ever become incapacitated, assets that are titled in your RLT will not be subject to Probate—i.e., a Guardianship Estate will not need to be opened in the Probate Court with respect to the RLT assets. In addition, assets that are titled in your RLT, or that are payable to your RLT as designated beneficiary (such as the proceeds from your life insurance policies), will be disposed of as you have specified in the RLT, will not be subject to Probate, and will not be disposed of as described in Strategies (1) or (2) above.

### (8) Adopting a Multi-Strategy Approach

Utilize Strategy (7) to establish a Revocable Living Trust ("RLT"), and then transfer into it all solely-owned assets. Utilize Strategy (2) to sign a type of Will known as a Pour Over Will specifying that if you do, in fact, own any solely-owned assets at the time of your death, they will be left, or "poured over", to your RLT. Utilize Strategy (3) to (a) name the RLT as the designated Beneficiary under your life insurance policies, and (b) name designated Primary, and Contingent, Beneficiaries under any annuities, IRAs, and retirement plans that you own. If you are married or a party to a civil union, utilize Strategy (6) and Strategy (7) to: (a) establish a 2<sup>nd</sup> type of RLT known as a Private Land Trust ("PLT"), and then transfer into the PLT the title of your principal residence; (b) specify that (i) the beneficiaries of the PLT are you and your spouse/partner, as *Tenants by the Entirety*, (ii) the 1<sup>st</sup> Contingent Beneficiary is the survivor of the 2 of you, and (iii) the 2<sup>nd</sup> Contingent Beneficiary (after the death of such survivor) is the RLT established by such survivor.

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