



Estate Planning, Trusts, Probate, Elder Law

Thoughts from Jim...

Your Estate Planning Attorney for the Long Run

As time have changed, so has the field of estate planning. When I started out in the field 22 years ago, people and their lives seemed to be less complicated. As the years went by, it seems like the issues my clients shared with me became more complex. Perhaps as I gained experience and felt more competent as a counselor, they were able to open up and tell me what was really on their minds.

Planning for the 21st Century

Today, clients who have been married for 40+ years and have two well-adjusted children and four well-adjusted grandchildren are in the minority. Ozzie and Harriet don't live here anymore. Perhaps they moved to the Midwest.

Instead, experienced estate planning attorneys are faced with planning for informed and sophisticated clients who come with "baggage" -- singles (either by choice or through divorce), same-sex couples, unwed couples, blended families, and dysfunctional families.

This change in family dynamics has led to a significant shift in how estate planners help their clients plan for incapacity

and death. Today we have to listen and counsel more and offer insight and guidance on a case-by-case basis instead of just providing basic information and a generic solution. We are collaborators with our clients instead of sellers of estate plans.

This is why it's so important for you to find an estate planning attorney who you feel comfortable enough with to tell everything -- about your grandson who is addicted to drugs; your sister whom you haven't seen in 20 years; your daughter-in-law who has turned your son and other children against you; your daughter and only child who has turned her back on you.

Without this information, your attorney won't be able to work with you to develop an estate plan that will really work for you and your family. Your estate planning attorney needs to hear it all -- the good, bad, and ugly -- and then help you put together an estate plan especially tailored to your current situation. And, as time goes by and your life changes, you'll need to go back to your trusted estate planning attorney again and again to tweak, fine tune, and revise your plan.

If you view your estate plan as a static set of documents that you do once and then forget

continued on P. 2

Estate Planning
Provides
Peace of Mind
-Jim Perry

IN THIS ISSUE

PRENUPTIALS

Can my wife and I change our prenuptial agreement?

PROBATE

My dad's girlfriend ended up with a share of his estate

POWER OF ATTORNEY

My mom refuses to fill out a power of attorney or health care directive

WILLS & TRUSTS

Can I be forced to serve as a fiduciary?

ESTATE PLANNING

Will your estate plan work when you need it?

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continued from P. 1

about, you've been greatly misled. That's why you are better off committing to a longer term relationship with trusted advisor, someone who takes the time to understand you and your family dynamics now and also understand that those dynamics can and will continue to change.

The son who you have been estranged from for 20 years comes back into your life, and you have to ask your heart if you want to take him back after the hurt you have felt for all of those years.

As your life changes, your estate plan needs to change.

Don't procrastinate on making the changes. •

Q&A

Estate Planning, Trusts, Probate, Elder Law

Prenuptial Agreements

My wife and I, who have been happily married for many years, signed a prenuptial agreement prior to our marriage. Can we now change the agreement?

The prenuptial agreement you both signed before getting married is an agreement that either you or your spouse may try to have enforced in the event of divorce or separation. After the marriage and before a divorce or separation, you and your spouse can agree to change the prenuptial agreement if you both agree in writing to do so.

Probate

My father died recently and the court made me the executor of his estate. I am the last survivor of his three children. My mother died in 1993. I thought I would inherit the entire estate after Dad's credit cards were paid off. Unfortunately, on one investment, Dad had pay-on-death clause that says it's supposed to go to some woman I've never heard of. Dad liked the ladies, especially the loose ones. I want to keep this floozy from getting Dad's money. Someone told me that the pay-on-death language trumps the probate and there's nothing I can do. Is this true?

Unfortunately, it is true.

It is common for bonds, insurance policies, pension plans, and bank accounts to have pay-on-death beneficiaries. Pay-on-death accounts are similar to assets held in joint tenancy, life estates, and trusts, in that none of these assets are subject to probate.

Because the pay-on-death account is not in your father's probate estate, you as executor have no jurisdiction over that account. At the moment of your father's death, the pay-on-death account automatically became the property of your father's lady friend.

All she has to do is to have the financial institution re-title the account in her name. She can do it herself by presenting a certified original death certificate to the financial institution and requesting the transfer.

There are provisions in the law for the executor to pull such non-estate property into a probate estate, but you would have to prove that the pay-on-death designation resulted from the friend's wrongdoing, such as fraud or undue influence. But it's a long shot at best.

To prove undue influence, you have to show that the girlfriend so manipulated your father as to destroy his free will and bend him to her influence. If she managed to pull that off, then why did she stop at just one investment?

It is more likely that your father added the pay-on-death designation because he wanted his friend to get that one asset when he died. Just because you feel this is unfair is not enough to keep her from getting the money. Just be glad your father did not put his

girlfriend's name on all of this property.

Power of Attorney

My mother is 87 years old and is still mentally competent and can handle her own affairs. She refuses to fill out a durable power of attorney or health care directive papers so I can take care of her when the time comes or if an emergency occurs. Any suggestions about what I can do?

It's your mother's life, and it's her decision to make.

Many people just don't like the idea of confronting their own mortality. Or, your mother may be concerned that if she gives you a power of attorney, you will turn around and start taking control of her finances, even move her out of her own home.

This is a common fear. Your mother does not want to give up her independence and is likely worried that giving you a power of attorney is the first step on the road to becoming dependent on others.

You need to convince her that you are asking for a power of attorney and an advance health care directive for the right reasons. There are two points you can make that should make it easier.

First, remind her of Terri Schiavo and other unfortunates who wound up in dire straits because they never bothered to create an estate plan. Ms. Schiavo was kept on life support for the better part of two decades, and we will never know if she would have approved of either receiving life support for so long or the removal of her feeding tube. An advance health care directive and a power of attorney may allow your mother to make her wishes known at a desperate time in which she would be unable to speak up for herself.

Second, you need to let her know that a power of attorney and a health care directive is only "just in case."

Neither has to take effect immediately. They can be written so that you would have absolutely no authority to do anything on her behalf unless her physicians determine that she is incapable of doing so for herself. She remain in complete control.

Trusts

My uncle has named me to serve as the Personal Representative of his estate, the successor Trustee of his trust, and his Conservator if he becomes incapacitated. I'm not sure I have the time or the desire to do it. Do I have to?

Fortunately, you can't be forced to serve in a fiduciary capacity if you don't want to.

If your uncle has named a back-up or a co-fiduciary to serve in place of you, then you can sign a document which states that you want to decline to serve and either the back-up or co-fiduciary will be able to serve. Or, if your uncle didn't name a back-up or co-fiduciary, in most cases a court procedure will be required to fill the vacant position.

If only your uncle had consulted with you prior to completing his estate plan and you let him know that you didn't want to or couldn't serve, he most likely would have selected someone else. While some people choose to keep their estate plans private, others choose to discuss it openly with their loved ones.

Unfortunately, this can cut both ways. On the one hand, a private plan can lead to surprises and arguments, but on the other, so can an open plan if it's later modified without the family being informed.

Of course, what you choose to do is entirely up to you, but your decision should be carefully considered based upon your unique family situation and after consultation with your estate planning attorney. •

Will Your Estate Plan Work When You Need It?

One glaring problem that I see time again in my estate planning practice is that in reality, most estate plans simply don't work. There are a multitude of reasons why estate plans fail. With that said, what is

the definition of an estate plan that will work for you and your family when it's really needed?

Control of your assets while you're alive and well.

First, you want to have an estate plan in place that gives you total access to, and control over your

THANK YOU FOR YOUR REFERRALS

Thank you to all my clients, and the many financial advisors, accountants, and attorneys who have referred family members and clients to me. Word of mouth is my largest source of new clients.

If you need a referral from me for a financial planner, a professional trustee, a care manager, a Certified Public Accountant, or a realtor, please feel free to call me. I work with a number of highly competent professionals in many fields, and I am happy to give you several names and phone numbers.

James D. Perry
Attorney and Counselor at Law



property while you're alive and well. This won't be the case if you assets are jointly titled with someone other than your spouse or if you fail to follow through on the terms of a property settlement agreement after a divorce.

Control of your assets while you're mentally disabled.

Second, you want to have an estate plan in place for you and your family in the event you become mentally incapacitated. Without a disability plan, your assets will end up in a court-supervised guardianship or conservatorship, and you and your family will lose total control. Disability planning includes taking care of both you and your property in the event that you can't take care of yourself due to an injury or illness.

Control of your assets after your death.

Third, you want to have an estate plan in place after your death that insures that your property will go to whom you want, when you want, and in the way you want. The alternative is to allow the state where you live at the time of your death to make your estate plan for you, and in most cases the state's plan wouldn't be the plan you would have chosen for yourself had you taken the time to make an estate plan. Instead, you can put an estate plan in place that passes your property on to the beneficiaries you personally choose to inherit your assets. If necessary, it protects the inherited assets from the beneficiaries themselves, their spouses, their children, and outside influences.

Control of the costs associate with settling your estate.

Finally, you want to have an estate plan in place after your death that minimizes both the financial and emotional costs associated with settling your estate. This includes planning to avoid probate, planning to minimize estate taxes, and planning for the payment of debts and estate taxes. Otherwise, it will be the government and the lawyers who will be the ultimate beneficiaries of your estate. •

Office News

Welcome to New Staff at Perry Estate Planning!

We have two new members of the Perry Estate Planning team. If you've called my office, you've probably spoken to Monica Sharifzadeh, my office manager and paralegal of 5 years. Joining her are Chu Phetcharat and Brooke Robinson.

Chu will be handling my office systems and technology. She is a graduate of CSU Long Beach, and she splits her time between my office and the Children's Law Center in Los Angeles. She plans to go to law school next year.

Brooke is in charge of marketing and outreach. She is a second-year student at Whittier Law School and a transplant from Chicago, IL.

I'm excited to have them on the team! •

**For more information and articles
from my Estate Planning Blog, go to:
PerryEstatePlanning.com**