



How to Peacefully Divide the Kingdom

By the age of 32, Alexander the Great had conquered lands from Greece to Egypt and into Asia. Then, suddenly, he fell ill and died. Alexander was a brilliant military strategist, but he failed to appoint an heir and he never considered the details of his legacy. After his death, the dispute over control of his kingdom led to 40 years of war and the murders of his son and brother. This is one of the earliest examples of poor estate planning.

Your own personal kingdom is probably more modest than Alexander's, but your need to plan for the disposition of your assets after your death is just as important to your heirs. The creation of a will or a revocable trust is usually the most common consideration in the estate planning process, but titling your assets properly is an equally-important aspect that is not often given the attention it deserves.

During Alexander's reign, he founded 20 cities that bore his name. Owning assets in your name might help your ego, but it can also complicate the disposition of your assets upon your death. Proper account titling, a seemingly innocuous detail, will have a significant impact on who inherits your assets after you are gone. Any mistakes in titling can potentially derail even the most carefully-written estate plan. There are a number of common titles that most individuals will recognize; yet most of us do not understand what they mean or how they

impact our estate planning. Below, we attempt to make some sense out of the titling dilemma.

Individual Name

The simplest way to title an account is to register it in your sole name. While you are alive and competent, you will enjoy sole ownership and control over the account. If you become incapacitated, however, the appointment of a guardian may be necessary to manage the asset. When you pass away, the individual account is distributed to the beneficiaries of your estate, subject to a court proceeding known as probate. Guardianship and probate proceedings are time consuming and expensive, and for this reason, many people avoid titling assets in their sole names.

Tenants in Common

Tenancy in Common (TIC) is a form of shared ownership. The TIC designation dictates that each individual owner holds a pro-rata interest in the account. Even though there are multiple owners listed on the account who have access to it during lifetime, upon the death of an owner, his or her share is treated as if it were listed in his or her individual name.

Joint Tenants and Tenants by the Entirety

TIC ownership can be contrasted with other

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forms of ownership known as Joint Tenancy with Rights of Survivorship (JTWROS) and Tenancy by the Entirety (TBE). Unlike TIC, JTWROS and TBE will avoid probate proceedings on the death of one co-owner. Each owner enjoys full access to the account during life and upon the death of one owner, the surviving owner(s) will own the entire remaining interest. This is true irrespective of the provisions of your will or trust.

Ownership as TBE is limited to married couples. During the marriage, TBE ownership has the additional benefit of protection against the liabilities of one spouse. While Florida recognizes TBE, it is not recognized in every state and this should be considered when planning with this form of co-ownership.

Ownership by a Trust

The creation of a revocable trust and the titling of accounts in the name of the trust is a common estate planning practice. Creating and funding a revocable trust is an efficient way to hold title to assets because it obviates the need for guardianship and probate proceedings. Generally, the person establishing the trust (the "grantor") serves as the trustee (the legal titleholder of the trust's assets) and is also typically the sole beneficiary during life. Upon the death of the grantor, a successor trustee will manage any remaining trust assets for the beneficiaries designated within the trust.

Accounts with Beneficiaries

Probate can also be avoided with individual accounts by adding a named beneficiary to the account. These are commonly known as "transfer on death" (TOD) or "pay on death" (POD) designations. With a TOD/POD, you can designate an individual or a trust as the beneficiary of the account and that named beneficiary will automatically become the owner upon your death. These designations can typically be made on bank accounts, brokerage accounts, and retirement accounts (such as IRAs and 401Ks) to distribute the asset upon the

owner's death to the designated beneficiary without a probate proceeding. It is important to note that the beneficiaries designated on such accounts will receive them upon your death, regardless of the provisions of your estate planning documents. Also, merely adding a beneficiary to an account does not protect against a guardianship proceeding in the event of the account owner's incapacity.

One eyewitness account of Alexander's death claims that he vaguely left control of his empire "to the strongest!" Leaving it to heirs to determine who is the strongest was as unwise on the battlefields of Babylon as it is in a 21st century courtroom. Alexander's "probate" process involved 40 years of fighting among his friends and family. Fortunately, it is easier to avoid today. It is critical that your estate and financial plans include proper documentation, detailed instructions, and correct titling. Further, account titling and beneficiary designations should be reviewed periodically in the context of your estate plan to make sure they are still in line with your wishes. Attending to these details will help your heirs avoid an epic battle of their own.

This article was written with the assistance of the Law Firm of MacLean & Ema; it originally appeared in the July 2015 issue of The Light, a local magazine serving Broward County, Florida.

Please consult your estate planning attorney with regard to your estate planning needs.

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