

This article will appear monthly in this newspaper as a public service. It is not intended as legal advice, and will address only general propositions. If you have a question about a matter which affects you, you should contact an attorney.

Q: My father recently passed away. His Will stated that he intentionally was leaving nothing to my sister, and that his entire estate was to be transferred to me upon his death. However, I have recently discovered that my father had a couple of investment accounts that were set up as payable on death to my sister, and that I would not receive any of the money in those accounts. How is this possible? I thought that a Will always controlled the disposition of someone's assets upon their death.

A: Many people believe that a Last Will and Testament will dispose of all of their property upon their death. However, often times this belief is incorrect, sometimes with surprising results. In general, a Will only disposes of assets which are held in one person's name alone and do not have a "beneficiary designation" or "payable on death designation".

An asset which is jointly owned with another person will generally become the property of the surviving owner upon the other owner's death. Such an arrangement is common with spouses, and some people have joint accounts for reasons such as avoiding probate. Often this is done for convenience purposes so that a child can help with paying bills and handling finances. When setting up such accounts for this purpose, you need to be careful that you do not inadvertently make your signor an owner. Be very clear with the bank representative with whom you are speaking to make sure that they understand what you are intending to do. By putting someone as an owner on the account, rather than as a signor, upon your death that account will transfer automatically to the other owner. The survivor would have no legal obligation to distribute the money in that account according to your Will. Legally, they are presumed owners of the account. A problem sometimes arises with bank accounts on which a person wants to name a child or other relative or friend as a signor, but not as an owner.

An asset also must not have a beneficiary designation (unless the named beneficiary is your estate in order to be transferred by your Will). People generally recognize that assets such as life insurance and IRA accounts will be controlled by the beneficiary designations. However, these days people are able to dispose of more and more assets by means of payable on death or beneficiary designations. For example, investment companies sometimes offer the possibility of placing payable on death designations on investment or savings accounts. In addition, Arizona allows "Beneficiary Deeds" to dispose of real property upon the death of the property owner. This is essentially a payable-on-death deed, and is usually done to help avoid probate.

Real estate can also be confusing because it can be held in a couple different ways. If you own property with another person (or persons) as tenants in common, each person's share of the real property will be distributed on death pursuant to each owner's Will. This is true only if the property is held as tenants in common, not in joint tenancy with right of survivorship. Joint tenancy property becomes owned by the surviving owner or owners upon the death of one joint tenant. You need to check the deed by which you acquired the property to know the manner in which the property is held.

This is a complicated subject, and this article does not cover all of its aspects. The lesson is that it is important to pay very close attention to how your assets are titled, as well as to your estate planning documents. This way you can ensure that your property goes where you want it to go when you die.

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