

Desert Leaf “Brief Encounters” Article
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(507 words)

“Estate” Hangups Lynne Davies

I’m not crazy about the term “Estate Planning”. I think it’s very misleading. “Estate Planning” has me picturing the lords and ladies of Britain with their manors and estates. I’m at Downton Abbey worrying about the “entail”. Not many of us can fit that profile.

I think the term deters people from seeking legal assistance with their document planning. That’s what we’re really talking about: asset planning, future planning, personal planning. Yes, it does refer to situations where asset protection and tax considerations are involved. And, yes, it does refer to trusts for the benefit of future generations. But it also refers to powers of attorney, simple wills, deeds, and the titling of our financial accounts. That’s the kind of planning we should do. (I would love to hear your suggestions for a new term.)

Why Plan? Because there are many misconceptions about how property actually changes hands after the death of the owner. And there is confusion as to how that property is received here in the community property state of Arizona.

Don’t get hung up on false impressions

Even though your Will provides that your property is to pass a certain way, there are many situations where the Will or Trust does not control. I will give a few examples.

A **beneficiary designation** (POD - payable on death; TOD - transfer of death) on any of your financial and retirement accounts will control.

Life insurance and pension plans allow for beneficiary designation. These arrangements are contracts and their terms dictate the passage of proceeds.

Deeds for real property will control in most situations. Perhaps you hold property in a form of joint tenancy with another person (relative, business partner, subsequent spouse). The deed will dictate how the property passes. Similarly, a Beneficiary Deed naming someone to take title to your real property at your death will control even when the Will may state otherwise.

Divorce can complicate the picture. Your Decree of Dissolution or similar document should specify how your property is to be titled from then forward. Make certain that any such change is consistent with your wishes.

Don’t get hung up with worry about your beneficiary

A common concern exists among Arizona residents who are transplants from other states. “How do my married children receive assets inherited from me?” If you are worried that a son-in-law

or daughter-in-law will have access to property inherited by or gifted to your children, you needn't be.

In Arizona, the law provides that, unless otherwise titled, property held by a husband and wife is owned by the community, that each spouse holds an undivided interest in that property. But there are exceptions to this. For instance, your child's property owned before marriage remains separate property. In addition, **property received by gift and inheritance is NOT community property**. It is the recipient's separate property, and if that recipient wants to retain it as such, it should be held in a separate account and titled as such.

Now that this is all settled, we can head out to the fox hunt.