



The DeGennaro Law Firm Estate Planning Newsletter

This estate planning newsletter is provided by the DeGennaro Law Firm to help educate individuals and families that wish to understand and navigate through the myriad of legal concerns that will confront them in both life and death.

A CASE STUDY IN HOW NOT TO AVOID PROBATE

Years ago, two brothers sought our law firm's assistance in prosecuting a claim against their oldest brother, Robert. Here is their story: The brother's father had recently died and their mother was in poor health. (Mom and dad had long before made a will leaving all of their property equally to their children.) Mom was often hospitalized; the last time she was not expected to live. While in the hospital, the three brothers discussed what to do with their mother's estate, consisting primarily of her home, after she passes on. They wanted to avoid the expense of probate. The brothers agreed that if their mom survives the latest hospitalization, they would have mom put the deed to her home in her name and Robert's name as co-owners. Then, when mom passes on, probate would be avoided as Robert would get title to the home as joint owner. The brothers agreed that Robert would then sell the home and the proceeds would be divided equally among them. Robert was chosen because he was single, living in the home with their mother, and taking care of her personal and financial needs.

Well, mom survived and came home. Shortly thereafter she signed a new deed putting title to the home in both her name and Robert's name. To the surprise of the brothers, their mother lived almost a year longer than expected. After the funeral the two brothers called Robert and asked his plans for selling the home. "What home", Robert said, "the deed to the home is in my name, why should I want to sell my home?". Thus, a close family relationship ended as the two brothers took their brother Robert to court.

What caused Robert to break the agreement he made with his brothers? No one expected mother to live more than a few weeks after she returned from the hospital. As the primary caretaker of his mom, Robert attended to all of his mom's needs. Robert's brothers would periodically visit, but they were raising their own families during that time. So, the burden fell on Robert to care for their mother longer than anyone anticipated.

The result? The case was settled on the courthouse steps and, like most family feuds, the damage was permanent. Robert chose never to speak to his brothers again.

Lesson Learned. Think carefully before placing an adult child's name on your deed. In this case, avoiding probate was far more costly, in money and in human toil.

Some Frequently Asked Questions about Wills

What is a will and does one always need a will?

A will is a formal declaration by you of what you want to happen to your property upon your death; that is, who gets what and how much. Although not everyone needs a will, nearly everyone should have a will. Since a will provides for the disposition of your assets upon death, if you own nothing, than there is nothing to dispose of. Although it is very unlikely you will die without owning any property, even then having a will provides a peace of mind in the event you do.

What if I own property at the time of my death and do not have a will?

If you die owning property at the time of your death and you do not have a valid will, the state where you are domiciled will decide who gets your property and, how much. Having a will allows you, not the state, to control the disposition of your property when you die.

Do I need a will if I own my property jointly with my spouse?

If you and your spouse own your property jointly, upon death, your spouse will become the sole owner of the jointly owned property. Since jointly held property is not part of your estate when you die, the property will not be subject to probate. However, what if you and your spouse die in a common disaster? What if you have minor children? Who will be their guardians? Your will can provide for these contingencies, even though your property is jointly owned.

What is "probate"?

Probate is the formal process of overseeing the distribution of your property to the beneficiaries named in your will, or to your heirs if you die without having made a valid will. In either case, whether you die with or without having made a will, your property will be distributed to your heirs or beneficiaries under the supervision of a court called a probate court. This distribution will take place after payment of administrative expenses and valid creditor claims.

Complimentary Consultation

The DeGennaro Law Firm provides a complimentary estate planning consultation, including an completed Patient Advocate/Medical Power of Attorney, for those who wish to learn about the importance of proper estate planning for themselves and their families.

For a complimentary office visit please call 248.350.0404

**The DeGennaro Law Firm
21415 Civic Center Dr., Suite 212
Southfield, MI 48076
www.degennarolaw.com**



Lou DeGennaro is a member of the estate planning division of the Michigan Bar Association. He is dean emeritus and retired Professor of Legal Studies at Lawrence Technological University. He holds a doctorate of jurisprudence from Michigan State University College of Law (1968). His post-law studies were at Harvard (1979) and Cambridge, England (1985). As an educator and practitioner for over forty years, he has lectured extensively on wills, trusts, probate administration and estate planning.

This newsletter and any description of current law and its application are not intended as legal advice. Readers are directed to seek individual consultation with regard to their particular concerns.