BLASCHKO LAW FIRM

Ronan R. Blaschko
Licensed in MN and, WI
Federal and Bankruptcy Courts in MN and WI*

1551 Livingston Ave, Ste 103
Saint Paul, MN 55118
Phn (651) 204-7152
Email: Ronan@BlaschkoLaw.com
www.BlaschkoLaw.com

Basic Estate planning explained

PROBATE AVOIDANCE.
You can make voluntary decisions to express your intentions to transfer a specified asset to a named beneficiary while you are alive. You authorize this transfer by signing documents such as a beneficiary form for Life insurance and retirement accounts, transfer or pay on death forms (TOD/POD) for autos, bank and financial accounts, or filing a Transfer on Death Deed (TODD) for homes and real estate with the Title or Account holder.

If an asset is owned or titled jointly with rights of survivorship (meaning the person who owns the asset jointly with you gets the asset upon your death), this will supersede the named beneficiary unless you both signed the beneficiary document. In this case, after you both die the beneficiary gets the asset outside of probate. This is different than owning as “tenants in common” (TIC) meaning you each own an equal share. If you own an asset with other people as TIC then you can usually sign a form to name a beneficiary for your share. Assets that you can name a beneficiary will transfer outside of probate if you authorized and signed the beneficiary documents while living to transfer the asset upon proof of death regardless of what a Will states.

This is called “transferring outside of probate” and is part of probate avoidance planning that we will review with you. After death, you are not able to authorize or sign any documents to or express your intention. Any assets that were not already authorized to transfer outside of probate and are legally titled in your name only or as TIC upon death must go through Probate to be legally transferred.

WHAT IS PROBATE
Probate is a court supervised process to gather assets that did not transfer outside of probate, settle outstanding debts with any creditor claims and authorize the legal transfer of assets based upon the deceased person intentions, if known, such as in a Will. Without a will, the court will transfer assets according to the state's intestate statutes. These are laws that direct who gets the deceased person's assets such as spouse, then kids, parents, etc.

WHAT DOES A WILL DO
A Will is simply a set of instructions from the testator, (dead person) about what they want done with their things, children, pets and even funeral plans after they die. The Will can state who gets what assets and even exclude certain people from getting anything, except a spouse who is entitled to their marital share. The Will can create Trusts to hold assets for a named beneficiary rather than giving it outright to the person. This is called a testamentary trust.

The will can name an executor (person who carries out the Will's instructions). A personal representative is the person appointed by the court in a Probate and usually the same person. The executor/personal representative is responsible for giving away personal possessions to whomever the testator instructed (Items that do not have a formal title such as furniture, electronics, tools, etc.) Anything with a title or legal named owner such as a car

Ronan R. Blaschko
Licensed in MN and, WI
Federal and Bankruptcy Courts in MN and WI*

1551 Livingston Ave, Ste 103
Saint Paul, MN 55118
Phn (651) 204-7152
Email: Ronan@BlaschkoLaw.com
www.BlaschkoLaw.com

or financial account will have to go through Probate to transfer title or ownership unless they already have a joint owner or signed beneficiary document (Probate avoidance).

WHAT ARE TRUSTS AND HOW DO THEY WORK IN MY ESTATE PLANNING?
Trusts can be setup while a person is living ("Living Trust") and may be revocable or irrevocable. A person ("Grantor") can transfer their assets into a living revocable trust now or upon their death through beneficiary and transfer on death documents (see probate avoidance above) or through probate using the Will's instructions or if no Will according to the state's intestate statutes. Upon death a Living Revocable Trust continues and becomes irrevocable continuing to hold and receive any trust assets transferred to it already before death, by a transfer on death document(beneficiary), or through the Will and probate. A named Trustee will then manage the Trust. A Trust can control who, when and how much each beneficiary receives for years after the Grantor dies such as paying for college, a new home, car, living expenses or anything else for any or all named heirs according to the Trust's terms and the Trustee's discretionary power.

A Living Revocable Trust is the most common and although the assets are transferred to the Trust Name instead of your own, you still control them as trustee and for most purposes; the trust is disregarded as a separate entity while you are alive. Upon death the living revocable trust becomes irrevocable meaning you can't revoke it or take it back and any assets that were transferred to the Trust while you were alive continue being owned by the Trust and controlled by a Trustee without the expense or delay of Probate or receiving the asset as a beneficiary.

An irrevocable Trust will have to obtain a separate tax ID number and file separate tax returns because for tax purposes this type of Trust is a separate entity owning the assets. There are special rules for what assets can be transferred, who and to what extent the Grantor can control this Trust and special rules for tax treatment of transfers to or from the Trust. These types of trusts are typically used in asset protection planning and are complex requiring professional guidance usually by an estate-planning attorney and other professionals such as accountants, financial advisors and possibly corporate trustees.

A Will can transfer any assets not already transferred into the trust upon death, called a testamentary gift ("Pour-over Will"). Any assets that did not have a beneficiary, transferring outside of probate, and is still titled or owned by the Testator, will have to go through Probate to transfer to the trust or to whomever the Testator wanted it to go.

This is the estate planning basics using beneficiaries, transfer or pay on death (TOD/POD) in probate avoidance, Trusts, created now or at death, and a Will for all other instructions and assets not already taken care of.