Avoiding probate and protecting assets

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More clients implementing or updating their estate plans are looking for ways to avoid probate by using trusts to pass assets to multiple generations and protect those assets from creditor claims.

The probate process doesn't need to be painful. Titling assets and using beneficiary designations to automatically pass assets to another when you die saves time, attorneys' fees and costs while avoiding a probate administration open to public inspection. Titling an asset with another as joint tenants with rights of survivorship allows for the automatic transfer of the asset to the surviving owner. But keep in mind that you make a gift to the other owner of an undivided interest in the jointly titled asset. With a joint bank account, the other owner has the right to withdraw funds at any time.

To avoid a gift, maintain control and allow for flexibility if you change your mind later, you may instead name a beneficiary of an account, stock certificate, real estate, etc. For example, if you name your child as the "payable on death" beneficiary of your bank account, you alone own and control the account during your lifetime, but the account balance will transfer to your child on your death without probate court involvement. Ohio also allows you to name a beneficiary of real estate using a transfer-on-death affidavit. The affidavit is recorded with the county recorder, but you have the right to change the beneficiary at any time and the beneficiary has no rights to the property; when you die, title vests in the beneficiary. Ohio even allows you to name a beneficiary of an auto or watercraft with Bureau of Motor Vehicles Form 3811, an affidavit you complete and file with the BMV. Again, you do not transfer ownership but merely name a beneficiary to whom title transfers on your death.

Avoiding probate through title changes and beneficiary designations does not save taxes, but it will save time and money.

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Using trusts for multigenerational and asset protection planning is also gaining popularity. When you transfer assets outright, you give up all control. Instead, funding a trust for a spouse or children allows you to set rules as to how and when assets are distributed, provide flexibility for unanticipated situations (e.g. divorces, substance abuse) and create a trust "wrapper" to protect beneficiaries from creditors. Ohio allows for dynasty trusts, giving a family the opportunity to create a fund to benefit multiple generations. With an Ohio Legacy Trust, you create an irrevocable, "self-settled" trust to which you transfer assets but may still receive income and principal distributions, change the trustee and beneficiaries and participate in investment decisions, while maintaining protection against creditors trying to attach trust assets. Prior to 2013, such a domestic asset protection trust was only available to an Ohio resident under laws of other states and required asset transfers to trustees in those states. Now, the creditor protection tool is available to Ohio residents using at least one Ohio trustee.