Your *Trust* Matters

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Overlooking Items in Estate Planning!

When one thinks of estate planning, Wills, Trusts, Power of Attorneys and Health Care Directives come to mind. Although these document types are essential to any effective estate plan, there are other less-discussed issues that should not be overlooked when implementing an estate plan.

1. Jointly-owned property

The most common form of joint ownership of property is known as "joint tenancy with a right of survivorship" ("JTROS"). Creating a JTROS is often quite simple. Adding a new signature card on a bank account or changing a deed on real estate may be sufficient; no special forms are typically needed. As a result, individuals often add a trusted individual to their bank accounts to enable that person to cash checks or pay bills on their behalf. However, clients must be mindful of potential issues that could arise when property is held jointly.

There are two key features of a JTROS. First, creating a JTROS results in the immediate vesting of control over the property involved in both joint owners. This feature can be an advantage and a disadvantage. One the positive side, it enables both joint owners to take charge right away and manage the underlying property. Conversely, it also allows one joint owner to legally deplete the account if he or she wishes and subjects the property to both joint owners' creditors.

Second, when one joint owner dies, the ownership interest in the underlying property immediately vests with the surviving owner. Accordingly, at death the assets which were jointly owned do not pass via the instructions in the Will. A thorough estate planner should review assets to ensure that they are owned in a manner desirable to the planner.

2. Payable-on-death (POD) designations

It is a good rule to review your POD beneficiaries annually as circumstances change. Factors that may change a situation include the birth or adoption of a child, a marriage or a divorce, or a death in the family. While POD designations are a convenient way to transfer property outside of probate, there are a few noteworthy aspects of POD designations:
Your POD designations will always supersede what your Will dictates. Any assets with a POD designation will automatically become the property of POD beneficiary at your death.
Assets transferred via a POD designation will likely not have protection from the recipient's creditors.

If a POD beneficiary is disabled at the time of your passing, receiving assets via a POD designation could possibly disqualify the recipient for disability benefits.
Listing minor children could be problematic, as minors generally will not be able to access the funds until reaching the age of majority.

3. Social media accounts

According to the Pew Research Center, 72% of Americans use social media to connect with one another, engage with news content, share information, and entertain themselves. For many estate planners, the disposition of social media accounts at death is not considered. However, it may be prudent to plan on what you wish to become of your social media accounts after your death as there may be more options to choose from than you would realize.

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Generally, the options available for deceased social media accounts are to leave the account as is, deactivate the account, or on some platforms a memorial account can be created. For example, Facebook allows a profile to become "memorialized" at the death of the accountholder, which allows Facebook friends to pay tribute to the decedent but also has heightened security features to protect against attempted logins and fraudulent activity. Similarly, Instagram and LinkedIn offer a memorial option for accounts, and although the platform has indicated it will be coming out with a memorialized account option, as of this writing Twitter does not offer this feature.

Thoughtful consideration should be given to what you'd like to happen to your social media accounts after your death, and your wishes should be documented in writing along with your Will.

4. Planning for Pets

Many pet owners do not have a plan for their pet to receive care in the event of their death, but such planning should be given careful consideration. Our pets depend on us, and in return they reward us with unconditional love and loyalty. It is our responsibility as pet owners to ensure they are cared for when we are no longer able to do so.

The law considers pets to be property; thus, they can be bequeathed to someone via a Will. To ensure that the named recipient of the pet is willing and able to care for the pet, it is important to choose someone who will have the time and resources to devote to caring for the pet. Talk to that person in advance of drafting the Will about these issues, or alternatively, determine if they will be able take the pet in until they can rehome the pet elsewhere.

Another option would be to establish a pet trust, which is money in a standalone trust that obligates the trustee to utilize the funds for the benefit and care of the pet. Pet trusts are governed by state law which may vary by state. An experienced estate planning attorney can help you establish a pet trust that will hold up in court.

An estate plan often involves many complex items, including some that are frequently overlooked. Taking into consideration factors such as those highlighted above can make for a thorough estate plan that will provide ease and comfort to you and your loved ones.