



TITLE ASSETS CORRECTLY

Avoid Probate

By Kathleen Korvalis and Elizabeth DeAnda

Many people mistakenly believe that upon the execution of a Will or Trust, their heirs are protected from the arduous and expensive process of probate. Although Wills and Trusts offer various degrees of protection, their value significantly decreases if assets are not properly titled.

When people die, there are three general possibilities relative to their assets. First, they may have a Trust, which, if properly funded, means that someone has been assigned specific distribution tasks that can be accomplished rather quickly. Second, they may have a Will, which designates a Personal Representative, who will work with the Court to distribute assets according to the decedent's wishes. Third, they may die intestate, which means that the Court will appoint an Administrator who will not be allowed to do anything without a written Order from the Court. Whenever the judicial system

is involved it is going to take time because the Court requires that all interested parties be notified, assets inventoried, and transactions reported.

If a Trust has been executed, it needs to be completely funded. That means that many assets owned by the individual(s) must be titled in the name of the Trust. For example, upon execution of the Trust, real property should be titled as "THE SMITH FAMILY TRUST, JOHN SMITH AND MARY SMITH, TRUSTEES." There is a minimal fee to record a deed indicating the change of ownership, but many people never make the change so the property is not owned by their Trust. That error ultimately costs thousands of dollars and months of time probating one piece of property.

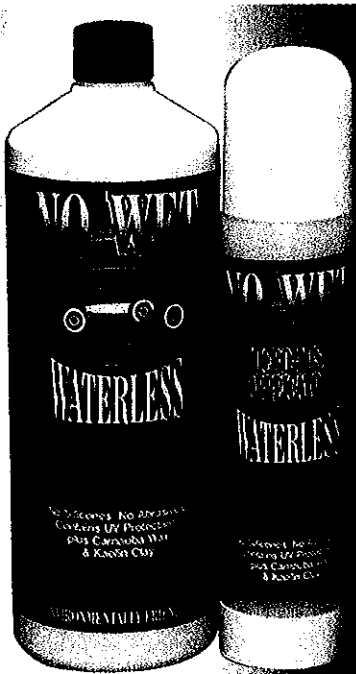
Married couples who do not have a trust can potentially avoid probate if property is titled correctly. For example, a

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piece of real property may be titled as owned by "JOHN SMITH AND MARY SMITH, husband and wife, as joint tenants with right of survivorship" or "JOHN SMITH AND MARY SMITH, husband and wife, as community property with right of survivorship." However, titling as "community property with right of survivorship" may offer a better federal income tax advantage. Upon the death of a spouse, the survivor need only record an Affidavit, but if the property was not accurately titled, half the property often has to be probated

Although insurance policies and retirement accounts typically have designated beneficiaries, sometimes people delay appointing beneficiaries, and then forget to do it altogether. It is important to not only designate beneficiaries, but also to periodically review and update them after marriage, divorce or death.

Standard checking and savings accounts can become victims of probate when they are not titled properly. Individuals can designate beneficiaries on their standard bank accounts. It is often recommended that the beneficiary be designated "per stirpes" meaning that if the beneficiary is deceased, his or her next of kin will receive the account.

Nobody enjoys the probate process and few have experience with it. By executing a Will or Trust and properly titling all assets, the probate process can frequently be avoided. ■

Kathleen Korvalis and Elizabeth DeAnda are paralegals at the law firm of Oshins & Associates, LLC. The authors would like to thank Attorney Steven J. Oshins for reviewing this article. For more information about titling assets, probate or trust administration, please contact them at (702) 341-6000, or visit www.oshins.com for additional contact information.

