

"Your Estate Matters"

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Legal-ease



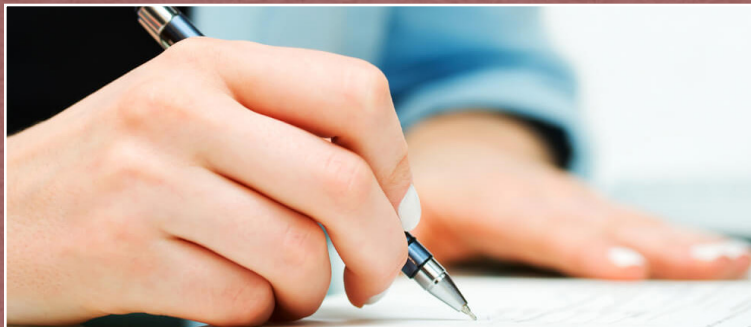
THE WRONG WAY TO TITLE ACCOUNTS IN LOUISIANA

In just the last month I have seen over a dozen instances of improper titling (ownership) of taxable non-retirement brokerage (securities) accounts that have really messed up a good estate plan. It never ceases to amaze me how many financial advisors (that live and work right here in Louisiana) have no idea how Louisiana law works when titling brokerage accounts. Here we go:

1) Louisiana does NOT recognize Transfer on Death (TOD) accounts. In Louisiana, the TOD designation is basically ignored and the asset must go through the deceased's Succession (Probate). Many times that is not the same person (or in the same amount) as the named TOD. Do not confuse TOD with a "true beneficiary" under an IRA, annuity or life insurance, which is valid, and should always name a beneficiary (and a secondary or contingent beneficiary, too). Most Banks allow a "Payable on Death" (POD) beneficiary on cash accounts (checking, savings, CDs), which is recognized in Louisiana.

2) Louisiana does NOT recognize Joint Tenants With the Right Of Survivorship (JTWROS) accounts. In the 49 other states, if another person(s) is named on the account as a JTWROS, then all that is needed is the death certificate and full ownership vests immediately in the other survivor(s), so there is no need for succession/probate to claim the account. In Louisiana, the ownership is presumed to be joint (we call this ownership "in-indivision") and the deceased's pro rata share must go through Succession.

3) If you are a married couple without a Pre-Nuptial agreement, your Joint accounts should NOT be titled as Tenants-In-Common (TIC) but as "Community Property". Louisiana had significant changes in our law on August 1, 2018. Namely, if an account is titled as Husband and Wife (by name) as "Community Property," then upon the first death, the surviving spouse's share is NOT frozen until the Succession is opened. If the account



does not specifically say "Community Property" in the titling, this new statute will not apply and the surviving spouse could be denied immediate access to their own money!

4) It is almost NEVER a good idea to own an account with anyone else as a Tenant-In-Common (TIC) unless it really is their money in the account too. Advisors often counsel a client (Mom) to add their child as a TIC to an account solely funded with Mom's money. If that child predeceases Mom, the child's half (which never was the child's money anyway) goes through the child's succession to his heirs or legatees. The last one we saw went to the deceased son's wife (yes, Mom's daughter-in-law, uh-oh.) If the child gets sued, that money is now at risk to the child's creditors. Upon Mom's death, even if the child is alive, Mom's half still has to go through her succession but now the child's half loses the step up in basis to Mom's date of death value. This loss could cause significant capital gains taxes. So please tell me, when is this a good idea?



See other articles and issues of interest!



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