



A trust representative office of National Advisors Trust Company, FSB

Monthly Update for Administration of Trusts from a Trust Administrator's Perspective.

It is our hope that our Monthly Update will be helpful to you and your clients to better understand the administration of trusts from a Trustee's viewpoint.

June, 2016

ACCIDENTALLY SHOOTING YOURSELF IN THE FOOT

Many times people do their own estate planning because they perceive that there is no reason to spend money with a professional. After all, with the assistance of the internet, they can do it themselves! Unfortunately, many times people who do their own estate planning do not know the bad results that can occur using various types of methods.

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

Many times people put their real estate in joint tenancy with right of survivorship (JTWROS). Sometimes that is a good idea. Other times it is a bad idea. Frequently, parents will include their adult children on a JTWROS deed. The parents use that strategy with the thought process that all of their adult children will be alive at the time of the parents' death, thereby giving the adult children the real estate without having to have a probate proceeding and to avoid expense with attorneys.

THE "WHAT IFS"

However, there are many adverse possibilities that can occur in reliance upon a JTWROS deed. Examples include: What if there are two adult children, and one of the two children dies before the parents? That will result in the surviving child owning all of the property described in the JTWROS deed, to the exclusion of the deceased child's surviving children. What if there are no adult children who survive the parents? In that instance, the JTWROS deed accomplished nothing. What if an adult child becomes incapacitated?

It may then become necessary to have a guardianship proceeding to be able to sell or mortgage the real estate which is subject to the JTWROS deed. Another example, but which is very often overlooked, is what if one of the adult children becomes subject to a divorce proceeding? In most all instances, title companies require spouses to sign deeds and mortgages, even though the spouse is not named on the deed. A bitter spouse who refuses to sign a deed or mortgage can cause lots of family problems. Lastly, once a JTWROS deed is filed naming adult children, the parents have given up their ability to change their minds regarding who they want to receive the property after their deaths. Once a JTWROS deed is filed, to make any changes in ownership for that property, it is required that all owners, and their spouses, must sign a new deed. Obtaining the signature of a co-owner and the co-owner's spouse may not be obtainable at the time the parents wish to make another change. This situation frequently occurs when the parents put an adult child's name on the JTWROS deed, and then later that adult child becomes estranged from his or her parents, or the parents simply want to give the property to someone other than the child who is a co-owner.

SOLUTION

The solution to all of these potential "what ifs" could be deeding the property to a trust, instead of using a JTWROS deed. By using a trust, the parents can:

- Avoid the possibility of accidentally disinherit the

surviving children of a deceased adult child of the parents.

- Avoid the possibility of a co-owner and/or the spouse of a co-owner refusing to sign a deed or mortgage, effectively holding up whatever transaction the parents may be wishing to take place.
- Retain absolute control of ownership of the property, including the parents' right to change their mind regarding who they wish to inherit the property.
- Avoid uncomfortable conversations, or confrontations, with adult children who are co-owners of the property, because any changes the parents wish to make would require the adult children and their spouses to sign a new deed.
- Keep their estate planning confidential and private.

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WealthTrust Oklahoma is the Oklahoma Trust representative office of National Advisors Trust Company, FSB, which currently has more than \$9 billion under administration. We hold a federal charter and are independent.