



# Missouri

## *Ag Law Brief*

### **Introduction to Nonprobate Transfers**

Preparing an Estate Plan includes developing a strategy for the most efficient and effective transfer of ownership of property to Beneficiaries in the next generation of the family business. In addition to the goal of transferring ownership itself, the grantor may wish to guide the process by which that transfer occurs, the speed at which it occurs, or even place certain restrictions on the transfer. The Will is the estate planning tool most commonly included in that planning process. A thoughtfully considered and properly executed valid Will can accomplish many of the goals the testator has in terms of the absolute transfer of ownership of real and personal property after her death.

The proper execution and validity of a Will is governed by Missouri Probate Statutes which regulate the process of carrying out the wishes of the Testator, as evidenced by what has been documented in her Will, through the Probate Court after she dies. A person's Will may be moving through the Probate Court process for many months before the assets of the deceased are distributed to the intended Beneficiaries. In many cases, these assets can be locked up out of the reach of the Beneficiaries and, when those assets include money, can cause severe cash flow problems as the family struggles to transition the farm business.

The person who dies leaving no valid Will does so relinquishing any possibility they may have to influence the reallocation of ownership of their property to Beneficiaries.

Missouri's Intestacy Statutes are the default rules which specify how and to whom

all of the personal and real property of the deceased will be divided where the deceased left no valid Will. In fact, these default rules for reallocating property of those who do not leave a valid Will may result in a reallocation of that property entirely at odds with both the wishes of the deceased and the likelihood of success of the farm business.

There are many other Estate Planning tools which can be used to overcome the limitations that are present even in a validly executed Will. Some of these tools can be used to transfer property ownership to designated Beneficiaries immediately upon the death of the grantor overcoming this particular limitation of a Will. Other tools in this Estate Planning category can be used to intermittently transfer a portion of designated property, usually money, to specific Beneficiaries rather than all at once as is typically done in a Will. Finally, these tools may be used to establish a process to monitor how the beneficiary uses the transferred property leaving directions, including the repossession of the property, if the deceased's wishes regarding the use of that property are not fulfilled. These tools are referred to as "Will Substitutes" or "Nonprobate Transfers."

As these names imply, when a person chooses to use one of these tools to transfer ownership of property, she is doing so expressly to avoid the Probate process for some or all of her property and by doing so may facilitate the transfer of her assets to the Beneficiaries much quicker, or with more controls, than would be allowed using either a Will or the default Intestacy Statutes. In the case of immediate transfers, typically using a



Living Trust, the process results in the legal transfer of ownership of the designated property at the moment the grantor dies. That property is no longer part of the deceased's estate and therefore is not subject to the laws of Intestacy or the provisions of a Will.

There are many Nonprobate Transfer tools. The specific tool used largely depends on the type of asset being transferred as well as the objective desired. For example, where money is the asset which the grantor wishes to transfer immediately upon her death, she may use a Payable-On-Death (POD) account at a local financial institution. When the grantor dies, the beneficiary presents the death certificate to the financial institution, who then transfers legal ownership and full control of the money to the beneficiary. The beneficiary is, at that point, under no restrictions in terms of how they may use that money.

Life insurance can, and often is, used as an Estate Planning tool to expedite the process of putting money in the hands of Beneficiaries quickly. The life insurance policy is a contract between the policyholder and the insurance company. The policy contract directs the insurance company to pay the proceeds of the life insurance policy directly to the Beneficiary specified in the policy contract. In this way, the proceeds of the life insurance policy are never part of the deceased's Estate and never subject to the provisions of even a valid Will and in most cases does not influence the Beneficiaries other receipts from the deceased Estate under the Intestacy Statutes. There are other contractual arrangements which can result in the transfer of ownership at death of specific property to certain Beneficiaries including; employment contracts, custodial agreements, deposit agreements, compensation plans, pension plans, individual retirement accounts, employee benefit plans,

marital property agreements and many types of Trusts.

Trusts are managed by a Trustee for the benefit of one or more Beneficiaries. The estate planner, referred to as the Settlor of the Trust in this case, transfers legal ownership of some of her property, intended for the beneficiary, into the Trust. When the Settlor dies, a Trustee is appointed to manage the transfer of the assets placed in the Trust to the Beneficiaries according to the wishes of the Settlor. Again, the property placed in the Trust is generally excluded from the estate of the settlor and thus escapes the probate process.

Transfer-on-Death (TOD) registrations can be used to transfer securities such as stocks to a beneficiary upon the death of the owner without having to go through Probate. The stock owner contacts the account broker to establish a TOD registration account or designates the "Transfer on Death" intentions in the appropriate place on the actual security instrument. Beneficiaries of the securities must re-register the securities in their names once they have possession. This typically involves sending a copy of the death certificate and an application for re-registration to the broker or security issuer. Other Nonprobate tools include life estates, future interests, joint tenancies with right of survivorship, and joint bank accounts.

In many cases, the estate planner who has included one of these Nonprobate transfer tools in their Estate Plan, like a Living Trust, can retain complete control over her assets until her death allowing her to make changes in the estate plan over time. She may decide to make changes regarding the allocation of her assets, modify or entirely eliminate one of the Nonprobate transfer tools. However, If she eliminates one of these Nonprobate transfer



tools, the designated property which would have otherwise been secluded from the Probate process is returned to her Estate along with the rest of her property to be reallocated according to her Will or the Intestacy Statutes.

An individual may use Nonprobate transfer tools even if she does not have an actual Will, in which case, the balance of her estate will be distributed according to the Missouri Intestacy Statutes. However, even if the estate planner is able to use Nonprobate tools to cover all of her assets it is a good idea to have a simple “safety-net” Will which may simply designate a Residual Beneficiary. In this case, if the estate planner either forgot some asset or acquired a valuable asset after the estate plan was in place this neglected property would still go to a Beneficiary designated by the Testator rather than be subject to the whims on the Intestacy Statutes.



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