STOVER & SPITZ LLC

ATTORNEYS AT LAW

Succession of 529 Plans and UTMA Accounts

If you are the owner of a 529 Plan or the custodian of a UTMA account, do you know who will take over as owner or custodian at your death? It is important to plan ahead for succession of control of these assets in order to provide for a smooth transition.

529 Plans

529 Plans are education savings plans operated by a state or educational institution. These plans have an owner and a beneficiary. Funds distributed from a 529 Plan are generally income tax-free if they are applied to qualified higher-education expenses. The **owner** has control over the account, including making investment decisions that are within the parameters allowed by the account, changing the beneficiary and deciding when distributions will be made. The **beneficiary** is the person named to receive distributions from the 529 Plan.

529 Plans generally allow the owner to designate a successor owner. When a successor owner is named, then the ownership transition should be fairly smooth in the event the owner dies. If no successor owner is named, then the 529 Plan may have its own rules to determine the successor owner in the event no successor is named. If no successor owner is named then the beneficiary may become the owner of his or her own account, which can be especially problematic if the beneficiary is a minor.

UTMA Accounts

UTMA stands for the "Uniform Transfer to Minors Act" which is a law that has been adopted in some form by almost every state. UTMA allows property to be titled in the name of a **custodian** for the benefit of a minor, usually until age 21. Many different types of assets can be held in UTMA, including real property, stock, bank accounts and life insurance policies. In contrast, only cash can be contributed to a 529 Plan.

Each state's UTMA statute determines how the funds can be used. For example, Colorado's UTMA statute allows the custodian to distribute directly to the minor or for the minor's benefit as much of the property as the custodian considers advisable for the use and benefit of the minor.

Colorado's UTMA statute allows a custodian to nominate a successor custodian. The successor custodian then takes over in the event the custodian resigns, dies, becomes incapacitated or is removed as custodian. If the custodian ceases to serve and no successor is named, then the minor, if the minor is at least age 14, can designate a successor custodian. If the minor is under age 14 or fails to name a successor within 60 days, it may be necessary to petition a court to appoint a successor custodian.

Naming a successor custodian in advance can make it easier for a successor custodian to take over in the event the custodian ceases to serve. If the UTMA account is with a financial institution, check with that institution as to whether they have a procedure to name a successor.

This article is only intended to address succession of control of UTMA accounts and 529 Plans. If you wish to make gifts for the benefit of your children, grandchildren or other minor beneficiaries, we can discuss with you whether a UTMA account or 529 Plan is the best option, or whether a trust would be preferable.

A total of $258 billion was held in all 529 Plans as of June 2015

Source: College Savings Plans Network

Spring Newsletter 2016

Probate vs. Non-Probate Property

When it comes to both estate planning and the probate process, there can often be confusion about what property is to be distributed by the testator's last will and testament (his or her "Will"[1]). Contrary to common assumption, one's Will distributes **only** probate property.[2] This means that if your estate consists of non-probate assets, your Will will not control the disposition of all of your assets.

Non-probate property is property shared with a joint tenant or that contains a beneficiary designation. Some common examples of non-probate property include:

- Real property owned in joint tenancy with another owner (such as a spouse);
- Life insurance or retirement accounts with a named individual beneficiary;
- Bank, stock or investment accounts with a "Payable on Death" ("POD") or "Transfer on Death" ("TOD") designated beneficiary or owned in joint tenancy with another person; and
- Property held in trust (such as a revocable living trust or a trust settled by a third party for the benefit of the decedent).

On the death of the owner, his or her non-probate property will pass to the surviving joint tenant or named beneficiary – regardless of what the testator's Will says about who should inherit the property.

Probate property is comprised of a decedent's untitled assets, such as furniture, jewelry, and clothing, as well as property that does not have a joint tenant or a named beneficiary (other than "my estate"). For example, real property owned solely in one's own name would constitute probate property at his or her death, and would be distributed through his or her Will. Similarly, if the property is sold during the administration of the estate, the proceeds from the sale are distributed through the testator's Will. Some examples of probate property include:

- Real property in one person's name only, or held as tenants in common with another owner;
- Life insurance or retirement accounts that name "my estate" as the beneficiary; and
- Bank, stock, or investment accounts in a single owner's name or held as tenants in common, without beneficiary designations.

Even the most carefully drafted Will is incapable of distributing non-probate assets. It is important to review your beneficiary designations carefully to ensure that they are compatible with your estate plan and your intended distribution of your assets upon your death.

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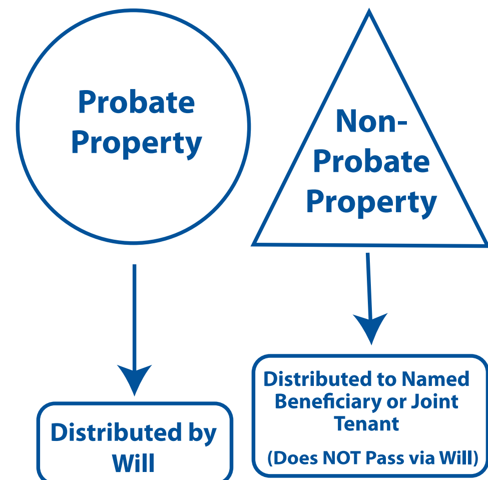
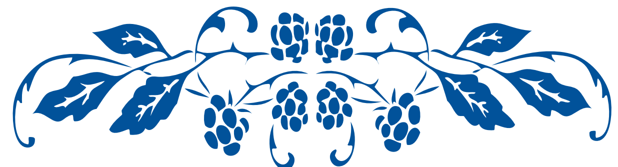
[1] A person who makes a Will is referred to as a "testator."
[2] If a person dies without a Will, his or her probate property will be distributed according to the state's laws of intestacy.





Trusts in a (Very Small) Nutshell

Trusts remain a source of confusion to most people. However, because of their versatility and many beneficial attributes, they remain a staple of many, if not most, estate plans. While trusts can be used to accomplish a variety of goals in a variety of different settings, all trusts have some common features.

All trusts have a **settlor** (also sometimes referred to as a grantor or trustor) who creates, and typically funds the trust. The trust will be for the benefit of one or more **beneficiaries**, who will receive distributions from the trust. One or more **trustees** will manage the trust for the benefit of beneficiaries.

The trust is a separate legal entity which can sell, own and convey property. The most common type of trust is a revocable trust, where the settlor reserves the right to amend or revoke the trust during his or her lifetime. A revocable trust usually becomes irrevocable and unamendable when the settlor dies. These trusts are sometimes referred to as will substitutes because the particulars regarding distributions of the decedent's assets are set forth in the revocable trust, not in the will. Usually, the settlor of the revocable trust will be the original trustee and the sole beneficiary during life. The primary allure of a revocable trust is to avoid probate. This can be accomplished if virtually all of the settlor's assets are transferred to the trust prior to death of the settlor.

Testamentary trusts, by contrast, are created to be effective only after the death of the settlor. The terms of the testamentary trust are contained in either a will or a revocable trust. Examples of testamentary trusts include the following:

a. <u>Trusts for Minors</u> are used to hold assets (often including life insurance policies), if both parents die while the children are still minors. The assets in the trust can typically be used for the health, education, maintenance and support of the minor. They often, but not always, terminate when the youngest child reaches a predetermined age (e.g., 21 or 25) at which point the trust will be distributed to the then living children in equal shares.

b. <u>Marital Trusts</u> are often used for estate tax planning, especially in second marriage situations, or as an alternative to outright distribution of an estate to a spouse. Even if the estate tax is not an issue, the spouses may wish to leave assets in trust for the benefit of the surviving spouse during the survivor's lifetime. This ensures that the balance of the assets will be distributed to their children when the surviving spouse dies, rather than leaving that decision up to the discretion of the surviving spouse.

c. <u>GST Trusts</u> – GST refers to the generation-skipping transfer tax. Even though most people do not need to worry about the GST tax, these trusts, usually created for the benefit of the settlor's children and grandchildren, are usually drafted to avoid many creditors' claims and the treatment of (most of) the trust corpus as marital property in the event of a divorce of the beneficiary of the trust.

Irrevocable trusts created during the settlor's life are often used to make completed gifts for the benefit of a child, a grandchild, or even a spouse, without the requirement of transferring the assets directly to the trust beneficiary. These trusts can be very useful, as the transferred assets can be held for the benefit of a beneficiary who lacks capacity (a minor, for example), who may be subject to creditors' claims, who may be in a shaky marriage, or who is just incapable of managing money. These trusts are also very useful for a beneficiary with disabilities who may need a lifetime of care.

Trusts are very versatile and useful planning tools. A properly constructed trust can provide a lot of certainty and control over your legacy.

TAX FIGURES:

For the year 2016, the estate and gift tax exclusion amount is $5,450,000 (up from $5,430,000 in 2015); the same is true for the generation-skipping transfer (GST) tax exemption.

For the year 2016, the gift tax annual exclusion remains at $14,000.

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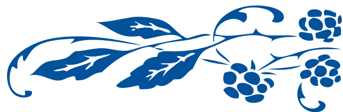
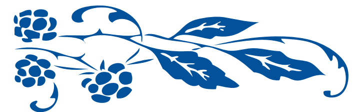


Who's in the News



Jennifer Spitz was named Best Lawyers® 2016 Trusts and Estates "Lawyer of the Year" for Boulder. Best Lawyers® published an article about Jennifer as a featured lawyer in a recent Best Lawyers® publication.

Tom Stover attended the National Fall Meeting of the American College of Trust and Estate Counsel (ACTEC) in Monterey, California where he participated in a number of invaluable seminars on current estate planning and related tax planning. He also helped prepare for an upcoming presentation at the annual meeting in March 2016, and as always continued his work as Colorado State Chair. In January, he presented a paper on planning with trusts to the Four States Irrigation Council at its annual meeting in Fort Collins, Colorado.

Kate Keiser joined the Rotary Club of Longmont in December 2015.

Stover & Spitz LLC is a Tier 1 Trust and Estates law firm, as recognized by U.S. News Best Law Firms.

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