

WHAT A WILL WON'T DO

Learn how to sidestep estate planning pitfalls

BY SHARON WATERS

That last will and testament you have tucked away? It may not be the last word on what happens to your stuff after you are gone. Instead, that legal document's directives for doling out your wealth may be overruled by other paperwork and relevant laws.

"A will is a document of last resort to transfer assets," says Eido Walny, a Milwaukee estate attorney. "There are a lot of ways to transfer assets that would preempt the terms of a will."

Here are some major assets that often fall outside a will's scope, along with tips for getting them to the people or organizations you want.

RETIREMENT ACCOUNTS

When it comes to 401(k)s, IRAs and pensions, the person or people listed as beneficiaries may end up receiving those assets regardless of what your will says (though state laws may sometimes intervene). That's because you've already told your plan administrator or investment firm how to handle the asset after your death, explains Portia M. Wood, a Los Angeles County estate attorney. "There's no longer a need for probate court interference," she says.

This can cause sticky situations, such as when you want your spouse to inherit everything, but your ex-spouse is still the beneficiary of your 401(k). Against your wishes, your ex may get those funds. "Many ex-spouses are not willing to say, 'Oh, I know it was a mistake. Let the current spouse have the money,'" says Atlanta financial planner Kamila Elliott.

Another problem can arise if no primary beneficiaries are alive and no contingent beneficiaries were named. Then the recipient could be determined by the default terms set when the account was opened.


LIFE INSURANCE POLICIES

As is the case with retirement accounts, a life insurance policy's beneficiary listing, not your will, generally determines who gets the money. So again, you could accidentally leave a policy payout to your ex. But both insurance and divorce are chiefly covered by state law, which can vary. (In contrast, private-sector retirement investments are primarily governed by federal laws.) Some states—Minnesota, for example—automatically revoke the beneficiary designation of an ex-spouse on a life insurance policy. The rules can be complicated, so the safest strategy is to update beneficiaries on all insurance policies and investments after a divorce. "You should not fall into the trap of trying to figure out which is a state account and which is a federal account. Just update all of them," Walny says.

A divorce agreement, however, might include a provision that an ex-spouse receives life insurance proceeds, notes Walny; in that instance, the policyholder should affirm that election with the insurance company once the divorce is final.

BANK ACCOUNTS

If an account is titled as transfer on death (TOD), payable on death (POD) or joint tenancy with right of survivorship (JTWROS), those designations generally override the will, says Reggie Fairchild, a South Carolina financial planner. Your account's signature card would indicate if any of these designations apply; you



can ask your bank to look up your card if you aren't sure. For individual accounts titled TOD or POD, the beneficiary can go to the bank with proof of identity to transfer or collect the funds. JTWROS accounts become the property of the surviving account holder, who will need to show the bank a death certificate for the other account holder.

REAL ESTATE

If two spouses own a home jointly with right of survivorship, the property automatically passes to the remaining spouse without a court's involvement. Real estate can also be transferred outside a will in certain states, such as Wisconsin, through a TOD deed, in which you name the beneficiary on the property, Walny says.

TRUSTS

Any asset in a trust is not governed by a will, making trusts another tool for distributing assets outside of probate court, Wood says. But after a trust is set up, you need to retitle accounts, change beneficiaries or take other measures so that each asset you want to put into the trust will actually end up there. Be aware that, under the 2019 Secure Act, most trusts have lost the ability to stretch IRA distributions over many decades; now, in most cases, those distributions need to be paid out within 10 years, similar to the case with nontrust IRAs, says Ed Slott, founder of IRAhelp.com. ■