

What will happen to your castle? Keeping it real and keeping your real estate out of probate – Part 1

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“There is only one god and his name is Death. And there is only one thing we say to Death: “Not today.” - George R.R. Martin, *A Game of Thrones*

Wouldn't it be nice if we got the chance to actually say “not today” so we could spend that day getting all of our ducks in a row that we should have lined up yesterday? Or, maybe you're someone like me that would then just spend that day doing every possible thing you could on your bucket list and hope your kids don't get too mad at you for leaving their inheritance in an administrative mess! Well, if not, one of those ducks might be your family home. What is going to happen to the house that you worked so hard to buy and turn into your home?

We often begin our client meetings by asking them what their goals are, and all too often we receive the emphatic response “to avoid PROBATE” oh, the dreaded world of probate. These clients either have had to deal with probate because they won the lucky prize of serving as grandma's executor, or they have heard the horror stories of those who have. Either way, avoiding probate always ranks in the top five reasons of why people come in to do estate planning in the first place.

Those same clients, however, do not always need the typical estate planning vehicle for avoiding probate – a revocable trust. Take Jack, for instance. Jack came in the other day saying he wanted to get an estate plan in place. He wanted to avoid probate because administering his dad's estate was expensive and slow. Jack's assets include a house worth \$200,000, a car worth \$18,000, a bank account with \$35,000, a life insurance policy worth \$375,000 and a 401(k) worth \$400,000. Jack said that he already designated his only daughter, a 35 year old teacher, as the beneficiary on his life insurance policy and IRA, and he filled out a transfer on death designation to her on his car and bank account. The secondary beneficiary on everything is his nephew, George, a 30 year old truck driver. Jack now wants to know how he can transfer his house in a similar fashion to avoid probate altogether?

Fortunately for Jack, he can accomplish this goal in both Missouri and Illinois (and numerous other states) by way of a Beneficiary Deed (MO – any real estate) or a Transfer on Death Instrument (IL – personal residence only). No matter what state Jack lives in, these are a great solution to his problem. Utilizing this method, a property owner can execute and record a beneficiary deed (or TODI) which will automatically transfer the property to the beneficiary listed on the deed. This transfer ONLY becomes effective at the death of the current owner(s), and the beneficiary has no rights to the property until then. The owner of the property maintains the same rights he or she had before executing the deed, including unlimited ability to change the beneficiary, encumber, sell or transfer the property. And best of all, when this transfer occurs it avoids probate altogether.

Because these documents are short, straight forward and easy to record, making them a part of any estate plan is simple and inexpensive. Whether you have a trust, a will or merely designations like Jack, these documents save time and hassle when it comes to transferring your real estate at death.

So, what will happen to your castle?

Check back soon to catch Part II of this series where we will discuss other issues surrounding real estate and potential cons to the beneficiary deed.