Price & Farrington's Estate and Tax Planning *Fast*Faxts

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Estate, Tax , Business and Wealth Planning for Advisors and Clients

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Summertime Smorgasbord: *Battle of the Beneficiaries + "Well-Spun Myth" + BookNotes*

Two recent Washington cases demonstrate that sometimes even estate planning "givens" shouldn't be assumed. The way an asset is titled can undermine intended estate planning goals. Asset titling that is intended to be controlling might not turn out to be. When the stakes are high, estate planning by the wrong assumption, by the seat of your pants or without appropriate professional guidance can be costly, no matter who wins. A couple of examples:

Will vs. Life Insurance Beneficiary: Who Wins?

Usually, proceeds of a life insurance policy aren't considered to be a probate asset. Therefore, the proceeds won't be controlled by the decedent's last will (unless the "estate" is named as beneficiary). But a Washington appeals court (in *Woodard v. Gramlow*) recently found that the proceeds of a life insurance policy can be directed to pay the debts of a testator's (i.e., the will maker's) estate if the testator expressly identifies by clear language in a will or testamentary trust an intent to subject such otherwise exempt property to the debts of the estate.

Facts. Gramlow, who wasn't trained in the law, prepared a will, an attachment to the will, and a living trust for Ms. Young. Ms. Gramlow was named as executor of Ms. Young's will. She was later removed and replaced by Mr. Woodard.

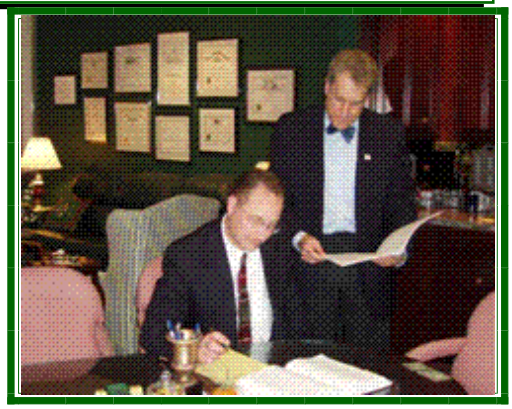
A life insurance policy owned by Ms. Young named Ms. Gramlow as sole beneficiary. Mr. Woodard asked the court to determine the rights of the parties, including whether the attachment to the will was intended by Ms. Young to be incorporated as part of her will.

The trial court decided that Ms. Young intended the attachment to be part of her will and that the attachment created a testamentary trust into which the life insurance proceeds would flow at death. The proceeds would therefore be subject to the administration and control of Ms. Young's estate. Ms. Gramlow didn't like that result and appealed.

Discussion. The attachment to the will, entitled "Instructions to my executor: Jacqueline B. Gramlow" showed Ms. Young's intent to consider the attachment as part of the will. The witness signature page stated: "4 pages including Attachment". The intent to incorporate clearly appeared from the will, which described the documents intended to be incorporated.

The attachment to the will created a testamentary trust that was incorporated into Ms. Young's estate by the wording on the witness signature page. The attachment required the life insurance proceeds to pay all debts, funeral expenses and expenses of last illness. The attachment then stated that after all expenses are paid the rest of the insurance proceeds should be invested in CDs. The court concluded that the insurance proceeds were intended to "fund" the trust. Ms. Gramlow ends up with nothing, *even though—or because—she drafted the plan for Ms. Young!*.

Conclusion. Probate-exempt property, such as insurance proceeds, can be used to pay the debts of an estate as long as the testator's intent to do so is clear in the language of the will or trust. The hidden danger is that *a properly written beneficiary designation might not be controlling*. The moral, as it is so often, is to have a competent, experienced estate planning attorney prepare your legal documents, not the likes of Ms. Gramlow.



Chuck Farrington (seated) and Glenn Price

Will vs. Payable-on-Death Beneficiary: Who Wins?

Summary. General language in a will which refers to certain bank accounts is not enough to replace the account beneficiary with the beneficiary named in the will.

Facts. Two payable-on-death (P.O.D.) account beneficiaries appealed the trial court's ruling that the accounts should be distributed by the Decedent's *will* rather than by the *beneficiary designations* on the accounts.

The language of the decedent's will provided: *"I have certain bank accounts and savings accounts...which are or may be in the joint name of myself and one of my children. Such designation is for business convenience only and is not intended as a gift to such child."*

The beneficiaries of the will agreed (big surprise!) that this provision of the will should control the P.O.D. accounts and that the P.O. D. account beneficiaries should return the funds to the estate.

Discussion. The question for the Court of Appeals was whether the testator had changed the payable-on-death account beneficiaries by the language that he had placed in his will. Washington state law does allow individuals to dispose of certain types of non-probate assets through their will:

"...upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the... beneficiary named [in the will] to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will." (*RCW 11.11.020(1)*)

Conclusion. In this case, the language in the will didn't *specifically* refer to the payable-on-death accounts. The will didn't clearly identify an entire category of non-probate assets that it intended to control. Nor did the language in the will identify a beneficiary. For these reasons, the will did not meet the legal requirements necessary to change the designated beneficiaries on the P.O.D. account. (See *Estate of Burks*)

Imagine a will trumping a beneficiary designation! That's the first case. Imagine the will beneficiaries brazenly attempting to undo the testator's P.O.D. beneficiary designations! That's the second case. *The moral? Get your estate planning ducks in a row. And that doesn't mean to "wing it". Just the opposite. Get good advice and professional guidance; it's foolish to do otherwise where your money, your planning and your family are all involved.*

Ponderings….

"Do not wait; the time will never be "just right". Start where you stand, and work with whatever tools you may have at your command, and better tools will be found as you go along."
Napoleon Hill

"If a man empties his purse into his head, no man can take it away from him. An investment in knowledge always pays the best interest."
Benjamin Franklin

"If you make mistakes, there will always be another chance for you. You may have a fresh start at any moment you choose, for this thing we call failure is not the falling down, it's the staying down."
Mary Pickford

"Kites rise against the wind, not with it"
Sir Winston Churchill

Few Wealthy Farmers Owe Estate Taxes, Report Says.

Number Is Down Sharply From 2000

As reported on July 10 in the New York Times, the Seattle Times and other newspapers nationwide… The number of farms on which federal estate tax is owed when the owners die has fallen by 82% since 2000, to just 300 farms, as Congress has more than doubled the threshold at which the tax applies, the Congressional Budget Office said in a report released last week. Next year, when the threshold rises to $2 million per person, just 123 farms will be subject to the estate tax. And in 2009, when it rises to $3.5 million, only 65 of the nation's 2.2 million farms will be affected, the study says.

In spite of a spirited, politically-driven, national lobbying campaign claiming that farmers are destroyed by the tax, some experts conclude that "this is a myth that has been well spun". Repeal is primarily a benefit to people with large estates held in stocks and other securities, not to farmers. "Farms, in particular," one expert says, "are not in jeopardy because of estate taxes."

This NYT article was written by David Cay Johnston, author of the recent book, ***"Perfectly Legal: The Covert Campaign to Rig Our Tax System to Benefit the Super Rich—and Cheat Everybody Else".*** *If you would like a copy of the Sunday, July 10 New York Times article, please let us know.*

"I liquidated my assets and put everything into scratch-off Lotto."

Estate Planning Book Notes:

"Women and Money: A Practical Guide to Estate Planning" by attorney Patricia M. Annino, is easy to read and packed with good advice for women of all ages and stages—single, married, widowed, divorcing etc. Colorful stories from the author's twenty-plus years of estate planning practice personalize the usually intimidating legal stuff, as she covers life insurance, disability, caring for parents and children, everything. Highly recommended for female clients trying to come to grips with estate planning. $15.99.

"The Beneficiary Directory" by Mark Kaizerman. This book is short and sweet. It's a simple system that everyone (clients *and* advisors) can use to organize their important documents and save their survivors time and trouble. The system is easy to use and the author provides plenty of pep talk. Because it encourages the reader to name one advisor as the "point person" for all information, the book should be a popular handout for advisors to give their clients. Kaizerman offers a training course for advisors on how to use the book on his website at www.beneficiarydirectory.com. This book is a great idea. $21.95. ■