



Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

## About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

## The Number One Mistake People Make in Their Estate Plan

There are a lot of complex things about estate planning, but the number one mistake people make is coordinating the title of assets with the plan. With all the complexities of property and tax law, fiduciary responsibilities including the choice of executor and trustee, and investment management, having the root of the plan disconnected by a gap in titling is unfortunate.

Example: Nancy writes a will. She thoughtfully designs who gets what and has her attorney draft the document. Her estate is to pass equally to her three daughters. Everything is in place and she reviews it every year. After her husband died, Nancy became concerned about having access to her money should she be incapacitated. She decides to add her daughter who lives nearby to her accounts as a joint owner so she could write checks or access funds if needed. When Nancy dies, all her liquid accounts go to this daughter instead of being divided equally as stated in her will. Why? Because joint accounts do not pass by the terms of the will.

There are three distinct periods in a person's life: "Active Life," "Incapacity," and "Death." One's account title should coordinate with one's plan documents in each of these three periods, yet we find most people set it up with only "Active Life" in mind, which is essentially control of and access to the funds right now. This focus on present control is sometimes at odds with the later periods. The good news is the problem is easily corrected and professionals should include "title of property" in their client reviews to ensure it remains correct.

Estate planning implications are often overlooked, and not all forms of ownership are available in every state. Here is a summary of key estate planning implications of each form of ownership.

**Individual Ownership** – When only one is on the account and the account passes by the terms of the will, passing through probate.

**Joint Tenancy** – Multiple people are named as joint tenants; there is a "right of survivorship," which causes the property to pass directly to the surviving joint tenant(s). It does not pass by terms of the will nor trust avoiding probate.

**Tenancy by the Entirety** – This is basically joint tenancy between spouses. Again, property owned as such passes directly to the surviving spouse bypassing the terms of the will and trust and probate.

**Tenants in Common** – This also involves multiple owners and is therefore sometimes confused with "joint tenancy," creating misnomers like "joint tenancy in common." There is no such thing but some state courts have had to rule on the issue when assets were mistitled as such.

## A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

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Tenancy in common creates a fractional-share ownership that does not have rights of survivorship and thus passes as the decedent's portion is owned, generally in his/her individual name, and thus under the terms of the will and probate.

Community Property – This is basically “tenants in common” between spouses. For the nine states where community property is the law of the land, community property is imposed, whether titled as such or not, on any property earned during the marriage. It sometimes causes confusion or dispute when pre-marital and post-marital property is mixed. The decedent's portion of community property passes in accordance with his/her will. To attempt to avoid probate on community property, some states have created community property with rights of survivorship, to pass directly to the surviving spouse.

Beneficiary Designation – Some assets pass by contact in which they are permitted to name a beneficiary. Examples include life insurance, annuities, retirement plans and IRAs, and “payable on death” forms of ownership. When a valid beneficiary is named, the property passes directly superseding the will and trust, and avoiding probate.

Trust Property – Property held in a trust passes by the terms of the trust, again bypassing the will and probate. Creating a trust is not enough; the assets also need to be retitled in the name of the trust. Community property can be held in a trust and still retain its character as community property.

Other forms of title include ownership by a corporation or partnership, but that is not what is important. What is important is how the shares of the corporation or interests in the partnership are titled.

Another misunderstood feature of titling is whether assets pass through probate. Probate means “proof” and is the process of proving the wishes of the decedent by validating his/her will. Many think probate applies only to intestate estates, where there is no valid will, but in fact everything passing under the terms of the will goes through probate.

Aligning the forms of ownership with the estate plan and keeping it properly aligned is crucial to ensuring that your wishes are carried out as intended at death. Check with your advisors on whether reviewing forms of property ownership and their alignment with the plan is part of the annual review process, and avoid this most common mistake in estate planning.

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