

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen R. DiTata

MISTAKES AND MISCONCEPTIONS: PAID ON DEATH (POD) ACCOUNTS

Estate planning, whether simple or complex, requires careful attention to details which, if overlooked or misunderstood, can undermine the plan's effectiveness. We will devote space in each issue to highlight common estate planning mistakes and misconceptions.

People often misunderstand how property is transferred after death. They believe that, when they name their spouse, children or other beneficiaries in a Last Will and Testament, the beneficiaries will automatically receive the assets after they die. This is incorrect. In order for the beneficiaries named in the Will to receive assets of the estate, the Will must be probated. Probate is the legal process by which the Surrogate's Court validates the Will and authorizes the nominated Executor to act on behalf of the estate. Before the Court will accept the Will for probate, the persons who would be entitled to a share of the estate if the decedent had died without a Will, are entitled to notice and an opportunity to challenge the Will or the appointment of the Executor. This process can be time-consuming and costly.

We regularly meet with clients who want their assets to be distributed, after death, without the need for a probate proceeding. Trusts have become a popular way of accomplishing this goal. Other ways to avoid probate include accounts that are joint or specify that they are "in trust for" or to be "paid on death" to particular individuals. Unfortunately, utilizing these kinds of accounts can sometimes lead to unanticipated complications. For example, if any of your beneficiaries are under age, incompetent or incapable of managing assets, joint, "in trust for" or "pay on death" accounts will not afford flexibility to designate someone other than the beneficiary to manage the assets. For this reason, it is always better to work with an attorney who has the necessary expertise to guide you so that your particular goals can be achieved.