Title Matters

Do you know what type of account you opened when you and your spouse opened an account jointly? What about the account you own with your child? When was the last time you looked at your deed? Did you and your spouse buy your home before you were married? When was the last time you reviewed your statements and how the names appear on each of your accounts?

How property is owned, real property and personal property such as bank and investment accounts, whether individually or jointly with another person, dictates each person's right to the property. It also determines how property will pass after the death of an owner. There are three main ways to own property: tenants-in-common, joint tenants and tenants by the entirety.

Tenants-in-common hold separate but undivided interests in the property. They have an equal right to possession and each has a right to use *all* of the property. For example, if a brother and sister both inherited their parents' home and now own the property as tenants-in-common, the brother could occupy the entire house and may not have to pay rent. This is true even though the brother and sister each hold an equal 50% interest. Tenants-in-common are not required to give their co-owners notice if they wish to sell or transfer their interest in the jointly owned property. If the sister decided to sell her 50% interest to a stranger, she could do so without informing her brother. Upon the death of a tenant-in-common, that co-owner's share passes to his or her estate and then in accordance with his or her estate plan. Creditors of any one tenant-in-common can reach that tenant's portion of the property. In New York, other than for married couples, unless otherwise specified, property owned by more than one person is presumed to be owned as tenants-in-common.

Joint tenants also own an undivided interest in property. The main difference between joint tenants and tenants-in-common is that, upon the death of a joint tenant, that co-owner's interests are extinguished and the surviving co-owner(s) receive the property. Financial institutions often refer to this ownership as "joint with right of survivorship." The property interest cannot pass by a Will or a trust, it automatically passes to the surviving owner(s). For real property, the only way to terminate a joint tenancy is by mutual agreement or by a petition in court. A joint tenant can transfer his or her interest, but the new owner and the remaining joint tenant(s) will own by tenancy-in-common. Generally, if you open a "joint" account with another individual at a bank, it is considered to be held as joint tenants. In New York, each joint tenant has a right to the entire account and can withdraw all funds from the account - so can the creditors of one co-owner!

Tenancy by the entirety can only exist between spouses and they must be married at the outset of the ownership of the property. As with joint tenants, immediately upon the death of one spouse, the surviving spouse inherits the entire property. No action is needed in court or otherwise. If spouses own property in this way, one of them cannot pass the property to children or other beneficiaries during the life of the other by a Will or trust. Creditors of one spouse cannot reach the property. This type of ownership cannot be terminated without the knowledge and consent of both owners. If the parties divorce, they no longer own property as tenants by the entirety.

We have learned that many people do not know how their assets are titled or what affect title will have on how their assets will pass to loved ones after death. Married people often assume that everything they own with their spouse is owned jointly. It comes as a surprise when they discover an account, a safe deposit box or a stock held in only one name. Employees at banks and other financial institutions unwittingly encourage account holders, especially seniors, to name beneficiaries on all accounts. But this can adversely affect the administration of the estate of the account holder. For example, if a parent has designated beneficiaries on all of the financial accounts but dies owning a house, the estate will have no money to pay the expenses of the house, taxes, insurance, utilities, etc., until the house is sold. This is often how fights among siblings begin. One child winds up bearing the burden and resenting that the others are not contributing. Sometimes a parent adds the name of a child on accounts merely for convenience. They believe this will ensure that "bills will be paid regardless of what happens." The legal effect is that that child owns the account at the parent's death. He or she may or may not understand that sharing the account had been what the parent expected. Worse, if that child has creditors, it may not matter that the account should have been shared with siblings.

A thorough review of title is an import component of comprehensive estate planning. Only if these issues are explored should you feel confident that your goals will be accomplished. We take the time to review all of our client's assets and how they are titled. We counsel our clients on the effects of how they hold title to property.