

Procedures when a probate is required

Most of our clients with larger estates or more complicated affairs use a revocable living trust instead of a will to do with their estate planning. One advantage of this approach is that probate can be avoided if the assets of the decedent are all properly titled in the name of the trust or transfer through beneficiary designations or can be collected by affidavit.

Unhappily, though, people with trusts sometimes pass away with some of their assets in their sole name. In that case probate is required.

When the person had a trust the question has arisen about what assets must be listed in the probate documents. In our office we've taken the conservative approach and listed all assets, both strictly probate assets and the assets held in trust. Of course, this has created more work and reduced the privacy of the decedent's planning, but we wanted to make sure our clients were complying with the law.



Happily, the Legislature in House Bill 452 cleared this issue up. The bill provides that a probate inventory and appraisal need only be of probate property. Therefore if we have the lion's share of the assets owned in a trust, we do not need to list them or otherwise involve them in the probate action.

On the other hand, the personal representative is charged by the law with handling tax issues of a decedent. One of these tax issues is whether the es-

tate is subject to the federal estate tax. To decide this there must be an inventory and valuation done of the assets. Up to now the personal representative's authority under Montana law to demand this information from other parties has been unclear.

House Bill 52 clarifies that the personal representative does have this authority.

Modification of Irrevocable Trusts

The Montana Uniform Trust Code provides that an irrevocable trust may be modified when the people who set up the trust (the "settlers" or "trustmakers") and all beneficiaries agree. Of course, when one of the trustmakers has passed away, we cannot take advantage of this provision. Nor can we if one of the beneficiaries does not agree.

In this case Montana law has provided that the family may go to the court and the court has authority to modify an irrevocable trust as long as the court determines that the modification is in accordance with the intention of the trustmakers.

In making this determination the law has provided that, when there is a spendthrift provision in the trust, it is presumed to be a material purpose of the trust. A spendthrift provision is one that seeks to protect the beneficiary by preventing the beneficiary from borrowing against the trust assets or assigning his or her rights in the trust to creditors. Since many estate planning trusts contain spendthrift provisions, the family has had an uphill battle to overcome the presumption.

House Bill 452 has changed this rule. Now, if the trust contains a spendthrift provision, it is not to be presumed to constitute a material purpose of the trust. The court is allowed to determine what the decedent intended to be the material purposes without being bound by the presumption.

FIRM NEWS



Holden, Chris's 8-year-old Malta grandson, came to stay with us for a week (pictured). July will bring a visit from the Portland grandkids. Maizie (5) already has plans to ride Jazz, Braxton (7) is sure that the pasture stream will need repairs on his dam from last year and Clive (3) just wants to run!



A new adventure—this summer, the Webb family went on their first cruise! Their trip to Cabo San Lucas in Mexico on the Disney Wonder included meeting all their favorite characters, dance parties, and sun bathing by the pool! Parker's favorite part was the Frozen theater production and Payton's was meeting Moana! The Webbs plan on cruising again next summer!

Jon's one year old granddaughter Rhenn called him "Papa" for the first time! Jon and Rhonda are looking forward to a fun-packed summer, highlighted by a visit from their son Ryan and a biking trip in Idaho.



Tally and her family have been enjoying BBQ and camping season here in Montana!



Summer is full of sunny days, warm weather, and adventure. One of Reena's favorite summertime adventures is hiking to new places in Montana. Recently, Reena, her boyfriend, and a group of friends hiked to Cataract Falls outside of Augusta.



The Squires have a busy summer so far! Camping, UTV riding, play dates, lunches, and the movies are just a few of their adventures so far. Caleb has also started a new position on base, meaning he gets to work from home 3 days a week. Theo is out of school for the summer, has lost 2 (soon to be 3) teeth, and is already looking forward to second grade in August.

The Tokeruds traveled this quarter. In May, Keith and Becky attended a Peer Group meeting in Minneapolis, staying with Becky's oldest friend. Then in June they drove to Fort Peck to see the dam, attend the theatre and to participate in a 5K walk over the dam. Becky got a medal for second place in her age group. Her first race medal ever! And Hannah, not to be outdone, traveled with friends to Norway for a week. She got to see the church where Keith's great grandfather was baptized.

"and so with the sunshine and the great bursts of leaves growing on the trees, just as things grow in fast movies, I had that familiar conviction that life was beginning over again with the summer."
- F. Scott Fitzgerald



Family Promise of Great Falls

We are excited to continue our work with our Charity Partner of the Year—Family Promise of Great Falls.

Thank you to LeRoy and Sheila Gaub for donating several handmade quilts by their late friend Peggy Novotny.

Greg, the director at Family Promise of Great Falls, told us when we dropped them off, that they will have a big impact for families in the winter!



Are you interesting in helping?

Family Promise is currently looking for :

- ⇒ Non-perishable foods
- ⇒ Diapers
- ⇒ Blankets
- ⇒ Monetary donations
- ⇒ Sanitizing wipes
- ⇒ Toilet Paper
- ⇒ Laundry detergent (pods)
- ⇒ Backpacks
- ⇒ Kids' Jackets
- ⇒ Gloves (all sizes)
- ⇒ Bottles of water
- ⇒ Socks (must be new, all sizes needed)

All donations can be dropped off at:

Family Promise of Great Falls
1019 Central Ave
Great Falls, MT 59401

THE LEGACY INSIDER



2023 Montana Legislation Changes

How It Will Impact Estate Planning and Administration Going Forward

Written by Jon S. McCarty

The 2023 Montana Legislature enacted several bills relating to estate planning and administration. The bills make planning and estate administration easier and less costly.

Use of Affidavits to Avoid Probate

Montana law provides that probate is required when a person dies with real estate of any value in his or her sole name. If a person died owning property other than real estate ("personal property"), and the value of all such property is less than \$50,000, a probate is not required.

The personal representative or trustee simply executes an affidavit, which is presented to the holder of the property, to collect such property.

In Senate Bill 286 the Legislature raised the amount that may be passed without going through probate to \$100,000, effective October 1st, 2023.

Use of Transfer on Death Beneficiary Designations

Montana law has long provided that bank accounts and security accounts may be passed without going through probate if the account owner has prepared a beneficiary designation form directing who should take the property when the owner passes away.

For bank accounts this beneficiary designation is called a "POD" (payable on death) provision, and for security accounts it's called a "TOD" (transfer on death) provision.

The 2021 Legislature provided that vehicles can also be passed by beneficiary designations using a TOD provision. However it was not clear what "vehicles" this included.

In Senate Bill 106 the 2023 Legislature clarified that not only cars and trucks but also trailers, manufactured homes, campers, and other property titled by the department may pass by TOD beneficiary designation.

cont. on page 2