

# The Blitz

January 2020

Information on Tax and Estate Planning from the  
Masonic Charities of the Grand Lodge of Pennsylvania



## Avoiding Probate Isn't Always the Right Answer

In this issue of *The Blitz*, we discuss a topic near and dear to my estate planning heart: the proper use of designated beneficiary forms. When I visit with individuals across the country to talk about their estate plans, inevitably, the discussion turns to the following question, "So, Al, how do I avoid probate?" ... which in their minds, is like a plague to be avoided at all costs. My response, to their

surprise, is, "That depends on your particular circumstance." So that's the rub. We can't assume that avoiding probate solves all our estate planning problems, and in many cases, it can even complicate the estate plan and its administration. To emphasize my point, let's review the plan of Fred from Altoona who asked me to visit with him recently.

*Continued inside*

## Fred's Assets

Fred worked at Sheetz in Altoona for most of his life and saved his money by living on Sheetz MTO hoagies, just like my son in Pittsburgh. He amassed a small fortune over the years through shrewd investing in the stock market. When he retired, I stopped to see how he was doing. He had the following assets:

- IRA worth \$500,000
- Brokerage account worth \$500,000
- Checking Account worth \$100,000
- Annuity worth \$100,000
- Life Insurance death benefit for \$50,000

## The "Avoid Probate" Recommendation

Fred said he had a Will done a couple years ago naming his son, Tom, as executor. He made some bequests to the Masonic Children's Home, the Save the Perogies Foundation and his favorite niece, Sue, with the rest going to Tom. However, he said Tom visited with him the other day with his hunting buddy, Joe, who suggested that Fred could avoid probate by naming Tom on all his assets. His friend said he would help Fred prepare the necessary beneficiary designation forms for his IRA, Brokerage Account, Annuity and Life Insurance naming Tom as the beneficiary of all of these assets. He also suggested Fred retitle his checking account with Tom as a joint tenant with Right of Survivorship. Fred wasn't sure if he should follow through with these suggestions.

## What is Probate in the First Place?

Probate is the judicial process whereby a Will is "proved" in a court of law and accepted as a valid public document that is the true last testament of the deceased, or whereby the estate is settled according to the laws of intestacy in the state of residence. In Pennsylvania, the Orphans' Court has jurisdiction over such matters. The process can take several years to complete and generally requires an attorney to assist in the process. Most relatives of a decedent are adverse to such a process. They

would much more prefer to get their inheritance in short time without the oversight of the courts. The problem is that in some instances, avoiding probate can expose a decedent's estate to abuse or further complications than using the probate process.

## The Problem

In Fred's case, he had a properly drafted Will for disposition of his estate with the help of his lawyer. His rogue method for avoiding probate with the advice of his son's hunting friend may not be a wise move. Here are some reasons why:

1. By having all his assets go outside probate to Tom, there are no assets left in the estate to pay creditors, or in Pennsylvania's case, inheritance taxes. There are no funds to pay for someone to settle the estate or to retain an attorney to pay for the cost of settling the estate.
2. Since all of Fred's assets go outside the Will he prepared, there aren't any assets to pay for the legacy gifts made in Fred's Will for the charities and his niece. Fred's wishes under his Will go unfulfilled.
3. Creditors may claim they have been defrauded by avoiding probate, and taxing authorities will look to the assets that went outside probate for recourse.
4. Without an appointed Executor and attorney to represent the executor, Fred's estate may never be properly settled and could be open to claims in the future.

## The Solution

Fred should never rely on the advice of a nonprofessional with fly-by-night estate experience to handle his estate plan. He should seek the counsel of his attorney who drafted his Will to confirm whether Joe is steering him in the right direction.

One solution would be to make sure sufficient assets are included in probate to pay taxes, debts,

executor and attorney fees. This assures the heirs that the estate is completed in a proper manner and all wishes of the decedent are realized.

There are also reasons for seeking professional advice on which assets should go outside probate and which should not. For instance, an IRA is usually distributed outside the estate for tax purposes. It may also be advantageous to honor a charitable gift from an IRA since the charity is not subject to tax and would realize the full amount of the gift, while an individual would need to pay income taxes on any IRA distribution, thereby reducing the amount received. Also, since life insurance is not subject to inheritance tax in PA, it is usually best to distribute such assets to the estate or individuals. Also, when Fred added Tom to his checking account, he essentially gave him the right to have access to the entire account and subject the account to Tom's creditors or settlement in a divorce proceeding. These are just some of the nuances of determining how your property should be titled for estate planning purposes.

Luckily, after a brief discussion with Fred about these potential problems, he contacted his attorney to revisit his estate plan.

## Caveat

1. Planning your estate to go outside probate to a surviving spouse is not unusual, and may be preferable, except in the case where the surviving spouse is not the first and the assets may never go to your children from a prior marriage as a result.
2. You should always have a Will prepared, even if everything is going outside probate and you have a trust in place. I have found many instances where one asset is found in a decedent's name and the estate has to be opened despite every attempt to avoid probate. The Will can then be probated to appoint an executor to complete the process for transferring these assets.
3. Besides having a Will, you should have your attorney prepare financial powers of attorney, medical powers of attorney and an advanced directive for your estate plan. Failure to have all these documents completed and updated regularly is essential should you become incapacitated.

**Have a Happy New Year, and I hope to see you at one of my receptions throughout the year!**

## Your Legacy Gift can Make a Difference!

If you want to support the Masonic Charities through your estate plan, there are several choices to consider, such as a designation in your IRA, a charitable gift annuity, Will or trust. Estate gifts comprise almost 90% of the gifts received each year by the Masonic Charities. You can give to the Masonic Charities in general or to any one of the charities listed below:

- **Masonic Villages**
- **Masonic Temple/Library and Museum**
- **Masonic Children's Home**
- **Pennsylvania Masonic Youth Foundation**
- **Masonic Charities Fund**

If you are interested in a complete list and description of each fund, or should you have any particular questions on how best to designate your legacy gift in your estate plan, feel free to reach out to me at any time. Have a happy and healthy 2020.



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As Chief Gift Planning Officer for the Masonic Villages in Pennsylvania, Alvin H. Blitz, Esq., serves the Masonic Charities of the R.W. Grand Lodge of Pennsylvania, which consists of the Masonic Villages, the Masonic Children's Home, the Pennsylvania Masonic Youth Foundation, the Masonic Library and Museum of Pennsylvania and the Masonic Charities Fund. Attorney Blitz holds a Bachelor of Science degree from the University of Scranton, a Master of Arts degree from Fairleigh Dickinson University, and a Juris Doctorate from Dickinson School of Law. He has given estate planning seminars throughout the country and is a member of Carlisle Lodge No. 260, Carlisle, Pa.

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## Ask Alvin In Person!

Catch up with Alvin in person to learn updates on the Masonic Charities of the Grand Lodge of Pennsylvania and more about tax and estate planning.

- Jan. 13: Phoenix, AZ
- Jan. 14: Tucson, AZ
- Jan. 28: Englewood, FL
- Jan. 29: Estero, FL
- Jan. 30: Cape Coral, FL
- Feb. 18: The Villages, FL
- March 3: Solana Beach, CA