

Trust protects you from the unexpected



Estate-Plan Edge
By CURT FERGUSON

YOU can hope for the best, but you should prepare for the worst: The saying is well-suited to estate planning, and the five primary ways you can leave your estate to your loved ones. Four of the ways are very common, and the other is becoming so. Here's an example of how they worked for one farm couple.

Like many happily married farm couples, Bill and Mary own most of their real estate in joint tenancy with right of survivorship. Bill also has life insurance, an annuity and some ground inherited from his parents. The couple also owns machinery and the usual personal effects.

Bill and Mary add up the value of all their assets and decide that at just under \$2,000,000 they don't need estate-tax planning. That amount is tax-exempt for deaths in 2006. Based on what they hear about probate, they want to avoid it.

Their general practice attorney assures them that (1) the joint property will avoid probate when one dies, and advises them to put the inherited property and machinery in (2) a joint living trust. He points out that in Illinois, up to

Key Points

- Probate avoidance is not difficult, but often fails to address other issues.
- The four most common planning methods provide no lawsuit protection.
- Proactive planning can preserve the family farm forever.

\$100,000 can pass under (3) a simple "I-love-you will" (all to Mary) without probate; that should cover their vehicles and personal effects. Bill's life insurance and IRA are payable to Mary as (4) designated beneficiary.

Assuming that Bill cooperates and dies first, that neither of them become disabled, and ignoring a multitude of other possibilities, how well will these four ways of planning work?

All of the joint property passes "automatically" to Mary. The life insurance and annuity are paid to Mary, and their financial professionals help her collect. The inherited property and machinery passes according to the living trust to Mary. Bill's miscellaneous personal effects and any vehicles in just his name — all together worth under \$100,000 — pass under the will to Mary. No probate. Mary is as happy as a widow can be.

So what went wrong?

A few months after Bill's death, Mary is out driving. It's an early misty morning

and she's driving a bit too fast. She loses control on a slick road and slams into a school bus, hurting, even killing, some of the schoolchildren.

In an instant, everyone's life is changed.

Mary will lose the lawsuits filed. It's her fault (for driving too fast). Her insurance company offers the full \$1,000,000 she had as liability coverage, but the plaintiffs obtain judgments for much more. All of what Bill left her — life insurance and annuity proceeds, their farm, machinery and personal effects — is taken.

Mary will live on Social Security and leave nothing to their children.

Asset-protection planning

A fifth approach for Bill and Mary would be to create an estate plan that provides for all of Bill's assets to pass to Mary in trust instead of directly to her or her living trust. (Mary can do the same for Bill, in case she dies first.) While Bill is alive, he retains 100% control. When he dies, practical control passes to Mary, still free of probate. The design of this special trust can provide Mary with very broad control.

Bill could specify that certain property must stay in the family. Under the four most common ways of titling and transferring assets — joint ownership, living trust, "I-love-you will" or benefi-

ciary designation — Mary would lose everything. But with an appropriate and affordable protective trust, she is safe. Their full \$2,000,000 estate can be protected as soon as either of them dies.

"But the risk of a lawsuit against Mary is so small, why bother?" one might ask. Such proactive planning can do much more.

When Mary dies, the protected trust can be split among their children into shares they control, and remain lawsuit-protected forever, even to subsequent generations. It will protect against a child's divorcing spouse, long-term disability, or about any other imaginable threat to the family wealth.

Such planning can protect the farm if Mary remarries. It can eliminate estate taxes: If Mary lives 10 more years and the estate grows 3% per year, the protective trust would save about \$800,000.

Focusing too much on probate can cause you to miss tremendous opportunities. A counseling-oriented attorney will help you explore these possibilities and plan accordingly.

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