

# ESTATE DECISION-MAKING 2024

This program is meant to help educate, but not direct you as to Wisconsin law and advance planning options for transferring /passing on property when an adult resident of Wisconsin dies.

## **1. Who receives your property when you die?**

In Wisconsin this varies by how you own your property/how it's titled, by what advance planning you have done before death, and whether or not you are married/have domestic partner.

## **2. How does marriage effect property rights?**

If you are married at the time of your death your spouse/domestic partner may *have marital property rights* (an ownership interest) even in property (real estate, bank/financial accounts, personal property) titled solely in your name. In general, a couples', *marital property* is property they accrue after the date of their marriage. A prenuptial or marital property agreement can change marital property rights. In general, marital property gives a spouse a ½ interest in property acquired after marriage, but this can be a complex issue requiring legal expertise.

## **3. My spouse and I are listed as joint-owners of our bank and other financial accounts, our motor vehicles, and real estate/home; and we are named beneficiaries on each other's retirement accounts and life insurance. Is this enough to pass on property to each other?**

Yes, in Wisconsin, this is usually sufficient to pass on property to a surviving spouse. Unless titled differently, most co-owned Wisconsin property of a married couple is considered jointly owned or survivorship marital property with right of survivorship. In general, naming a beneficiary of life insurance or of a financial account will result in transfer of it to the named beneficiary upon death.

## **4. What about property I own alone/is titled only in my name and with no beneficiary(s) and no will, what happens to it upon my death?**

In general, it depends whether you were married at time of death, have children from a prior marriage, and what relatives you have at time of death. In Wisconsin, if you are married at time of death with no children from a prior marriage, the property goes to your spouse, but depending on its value, may require a probate proceeding after your death. If you have children from a prior marriage, ½ goes to your surviving spouse and ½ goes to your children from a prior marriage or their heirs if deceased.

## **5. If I have no surviving spouse or children what happens to property I own alone/is titled only in my name and with no beneficiary(s) and no will?**

In Wisconsin in general it goes to your blood relatives in the following order:

- equally to surviving parent(s)
- equally to surviving siblings/their children if deceased (per stirpes)
- surviving grandparent(s)/their issue (per stirpes)

Depending on the total value of this property (usually more than \$50,000), a probate proceeding will be necessary.

**6. What if I have a Last Will and Testament (will)?**

In Wisconsin, solely owned property with no named beneficiary and not subject to marital property rights goes/is distributed to beneficiaries in accordance with provisions of the will. Depending on the total value of this property (usually more than \$50,000), a probate proceeding will still be necessary.

**7. What are typical ways to avoid the need for a probate upon your death?**

- Name beneficiary(s) of property
- Jointly owned property
- Revocable Living Trust

**8. How do I name beneficiaries of my property in Wisconsin?**

- For financial accounts, contact your bank or other financial services provider for its procedure for adding payable on death (POD) beneficiaries to an account.
- For life insurance and retirement accounts, contact your account representative or the company for its procedure for adding beneficiaries to an account.
- For real estate, prepare, file, and record a document with the real estate's county Register of Deeds designating a Transfer on Death (TOD) beneficiary(s). Contact an attorney experienced in estate planning/real estate to do so.

**9. What is a Trust and how may it help?**

There are many forms and uses of trusts, but a common form in estate planning is a Revocable Living Trust. A Revocable Living Trust is created by you while you are alive through a trust agreement. The typical Living Trust is a separate entity you create to hold some or all of your property. After the trust agreement is executed, some or all of your property is transferred to/re-titled in the name of the trust. Certain property such as retirement accounts typically cannot be re-titled in the name of the trust, but most else can. You typically serve as the initial trustee(s) for the trust and can do what you want with the trust and its property while you are alive. You also name successor trustees should you die or become otherwise unable to act as trustee. Upon your death the trust continues on, and the successor trustee pays your bills, files tax returns, and distributes your remaining assets/property as you have designated in the trust agreement. This usually requires no probate proceeding and usually takes the place of a will. A trust can hold property not in Wisconsin and is usually valid in other states.

**10. Can I do a trust or will myself?**

- I strongly advise that you do not attempt to do so, and advise you to retain a Wisconsin attorney proficient in trust/will creation and estate planning.

**11. What else should I do?**

Discuss your estate planning and wishes with family, named trustees, executors/personal representatives. Periodically review and update, if necessary, your will, trust, POD/TOD beneficiaries, or other estate planning, as your wishes, beneficiaries, circumstances, and the law may change over the years.