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PUTTING OFF THE ESTATE PLAN By Randy Spiro

Unlike Criminal Law, Immigration or Bankruptcy, there are no natural hot-button items that drive people to start or finish an estate plan. Sometimes, a pending vacation or a close call with one's health can spur on the creation of an estate plan, but each state has an estate plan for those who fail to plan and that plan is called the laws of intestate succession.

These laws state who receives the assets of a person who dies without a Will. Typically, these laws are different for community property and for separate property and in some cases they are different for assets that have been inherited from a predeceased spouse. Most lay people do not know these laws and they are thus in the dark as to who will inherit their estate if they do not designate their inheritors.

IRAs, retirement plans and life insurance are assets which pass under a beneficiary designation form, but if none has been filed out, the assets will pass under the laws of intestate succession if there is no Will. The same result occurs when a person has named beneficiaries, but the beneficiaries have died before the person.

Even worse, the beneficiary may be an ex-spouse, an ex-girlfriend or one's former best friend. Most people don't keep copies of beneficiary designations that they have filed out and therefore they are not sure who will inherit their IRA, retirement plan or life insurance when they die.

Delaying creating an estate plan means delaying reviewing and updating beneficiary designation forms. Similarly, there are different ramifications to different methods of holding title to property which are not intuitively obvious. For example, joint tenancy property passes to the surviving joint tenant and not by the laws of intestate succession while tenancy in common property passes under the laws of intestate succession where there is no Will and not to the surviving co-owner.

Leaving assets to pass under laws of intestate succession and/or under beneficiary designations and/or through joint tenancy when the ramifications of who will get what are less than clear to the property owner is a unintended consequence of putting off the estate plan. One hot-button that may avoid this is the premature death of one's best friend. Seeing what would have happened had you been the one that died can have a sobering effect.