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Ask the Experts: How to pass property to heirs without a will

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Do I need a will if my kids are listed on my bank accounts and home deed? Does a trust amendment need to be notarized?

Those questions from readers get answered this week by Roseville estate planning attorney Lynn Dean, one of Sacbee.com's "Ask the Experts."

To see more of Dean's advice, or to ask questions of The Bee's other local experts on taxes, investing or personal finances, go to www.sacbee.com/ask

Q: I have both daughters on my house deed, on all my bank accounts and on my stocks. I do not have a will or a trust. Am I OK?

Lynn Dean: "OK" is a relative term. If your question is: "Will my assets go to my daughters without probate?" The answer is "It depends."

There are two problems that can arise when you put your children "on" your assets. First, if your daughters were to be sued or had to file bankruptcy, your assets are also theirs. If they had a legal judgment issued against them, for instance, their creditors could look to your assets. If they owe money to the IRS or state Franchise Tax Board, your assets could be attached to pay those debts.

The second potential problem is if your daughters decide they need money. With a joint bank account, any of the owners can walk in and make a withdrawal. We've had many calls from upset parents whose children take money from joint bank accounts simply because they can. If your daughters are listed only as beneficiaries on your account, you don't need to worry.

Regarding your house deed, if all of you are listed as joint tenants, your daughters will own the house when you pass away, even without a will or trust. But if the three names are listed on the deed without the words "joint tenants with right of survivorship," your one-third interest does not pass to the daughters without a probate court proceeding.

As for the stocks, I assume your daughters are joint owners. When you pass away, they become owners of the

stock, but their tax basis is the same as yours (i.e. what you paid for the shares).

Your question cannot truly be answered without considering the pros and cons of how to pass property to your heirs. I have seen "do-it-yourself" home deeds, for instance, that resulted in thousands of dollars of legal work.

I'd suggest sitting down with an estate planning attorney to look at your options. If you don't want to spend a lot of money, put the house into joint tenancy with your daughters and put them on your bank accounts as beneficiaries. That way, they cannot sell the house without your permission and only receive your money after you are gone.

If your estate planning is done properly, it will protect you and your children from an expensive situation.

Q: Do trust amendments need to be notarized to be valid in California?

Generally, a trust amendment should be signed in the same manner as the trust was signed. If the trust's original signatures were notarized, then the signatures on the amendment should be notarized.

It is not a "legal" requirement but a way of ensuring that no one, other than the settlors (those who created the trust), can amend the document.

For example, let's say that Mom's trust leaves the house and everything else in equal shares to her three children. However, a daughter decides she is entitled to the house, in exchange for giving up her job and caring for Mom the last five years. If that daughter can "amend" the trust (i.e. prepare a written document and sign it for Mom without it being notarized), she could claim Mom wanted her to have the house. Thousands of dollars will be spent on attorneys litigating the validity of the amendment and whether or not Mom was competent when it was signed.

Bottom line: If Mom ï or anyone ï wants to amend a trust, I strongly recommend that any amendments be notarized.