IDENTIFYING AND ADMINISTERING NONPROBATE ASSETS

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I. Introduction

Many estates contain a mix of probate and nonprobate assets. Administrators and their legal counsel should understand the difference and the effect of those differences. It is sometimes possible that the expense of a probate can be avoided if a decedent's estate contains only nonprobate assets. Yet, creditors and estate expenses must still get paid, and which assets pay for those bills differ depending on the nature of the asset. Also, because a decedent's taxable estate is composed of all assets – probate and nonprobate – an administrator cannot ignore any of these assets when determining the tax liability of the estate. Furthermore, some assets may be improperly assumed to be nonprobate and should be captured by the administrator and brought into the estate and distributed according to a person's will. This presentation will examine the different types of nonprobate assets, how to administer them, and some special issues that might arise when dealing with these types of assets.

II. Nonprobate Assets

Definition. Washington law defines nonprobate assets in RCW 11.02.005(10). Generally, the definition captures those assets that "pass on the person's death under a written instrument or arrangement other than the person's will." Often this is a contractual arrangement between the decedent and the financial institution whereby the financial institution agrees to transfer the asset to the person the decedent designated. Other times, it can be a deed executed by the owner of a parcel of land where the owner makes a transfer on death designation. RCW 11.02.005(10) provides many examples of such instruments, most of which are discussed below. Importantly, the definition specifically excludes three common devices that practitioners assume would be

included as nonprobate assets: life insurance policies, annuities, and employee benefit plans. This exclusion is important in protecting these three instruments from the claims of creditors and the expenses of an estate, which is discussed further below.

Joint Tenancy Real Property. Joint tenancy is a form of ownership of real property whereby the ownership of the property immediately vests in the co-tenant(s) upon the death of one of the other owners. This type of instrument is created when an owner executes a deed adding one or more additional owners and declaring them all "joint tenants with right of survivorship" in the deed. When this type of tenancy is created, the joint owners own an equal undivided interest in the property during their lives. *In re Estate of Politoff*, 36 Wn. App. 424, 427, 674 P.2d 687 (1984). This is different than when the owners are designated as "tenants in common." As tenants in common, the owners own an interest in the property proportionate to their contribution—during their lives and after an owner dies. *Cummings v. Anderson*, 94 Wn.2d 135, 140, 614 P.2d 1283 (1980). When the ownership is held as tenants in common, the owner's interest becomes a probate asset when that owner dies.

The estate administrator should carefully review the last deed to determine whether the property was held in joint tenancy or as tenants in common. If the designation is not specific, the ownership is tenants in common. But the administrator must also consider whether the joint tenancy was ever severed by an act inconsistent with the joint tenancy. *See Estate of Phillips v. Nyhus*, 124 Wn.2d 80, 85; 874 P.2d 154 (1994) ("A contract or agreement by only one joint tenant to convey property held in joint tenancy destroys the right of survivorship, terminates the joint tenancy and converts it into a tenancy in common."); *see also Lyon v. Lyon,* 100 Wn.2d 409, 670 P.2d 272 (1983) (community property agreement severed the joint tenancy and created a tenancy in common between the surviving spouse and former joint tenant even though the community property agreement predated the joint tenancy).

If the property is held in joint tenancy and that classification has not been severed, to perfect title, the survivor(s) should record a certified copy of the death certificate of the deceased owner in the county in which the property is located. A real estate excise tax affidavit should also be filed, citing the exemption from excise tax found in WAC 458-61A-202(5).

Transfer on Death Deeds. Washington recently adopted a new form of transferring real property called the "Transfer on Death Deed" (also known as a beneficiary deed). Ch. 64.80 RCW. With this newly recognized beneficiary deed, a property owner can convert an otherwise-

probate asset into an asset that will pass outside of probate. This deed has the effect of conveying a parcel of real property to the beneficiary named in the deed at the moment the owner passes away. The deed has no effect on title during the owner's lifetime. The transfer on death deed is only effective with respect to the specific parcel of real property described in the deed.

As with joint tenancy, the administrator should carefully review the deed to ensure that it is a proper beneficiary deed. To be effective, the beneficiary deed must meet the elements of a properly recorded deed, must state that the transfer to the beneficiary is to occur at the death of the owner (also known as "transferor"), and must be recorded before the death of the owner in the public records of the county where the property is located. RCW 64.80.060. There is no need for a beneficiary to get notice of the deed, acknowledge the deed, or pay consideration for the deed. RCW 64.80.070.

The beneficiary deed can be revoked at any time without the consent or notice to the beneficiary. The document that revokes the deed must be signed by the transferor and acknowledged in the presence of a notary, must expressly revoke the transfer on death deed, and must be recorded before the owner's death in the records of the county in which the real property is located. RCW 64.80.080.

If the beneficiary dies before the transferor, the beneficiary's interest lapses and does not pass to the heirs of the beneficiary or as part of his or her estate. Instead, the property would pass to the transferor's heirs through a will, or intestate if there is no will.

A beneficiary who takes title to the real property after the death of the owner takes title subject to all conveyances, encumbrances, mortgage liens, or other interests to which the parcel of real property is subject at the moment of the transferor's death. In addition, the beneficiary's interest is subject to any claim for Medicaid recovery that is recorded within two years after the death of the owner.

After the death of the owner, the beneficiary should record a certified copy of the death certificate in the county in which the property is located. The beneficiary will also be required to present a real estate excise tax affidavit when the death certificate is recorded. WAC 458-61A-303(2)(m). However, there is no liability for excise tax unless some contractual obligation of the owner to the beneficiary is satisfied by the deed. WAC 458-61A-202(7).

Joint Bank Accounts. A popular, but sometimes misunderstood, form of nonprobate asset is the joint bank account. State law permits banks to establish accounts as joint *with* right of

survivorship and joint *without* right of survivorship. RCW 30A.22.050(2)-(3). While the joint account holders are alive, they own a share of the account "in proportion to the net funds owned by each depositor on deposit in the account, unless the contract of deposit provides otherwise or there is clear and convincing evidence of a contrary intent at the time the account is created." RCW 30A.22.090(2). This means that prior to the death of one of the joint account holders, each depositor only owns the amount that he or she deposited into the account, absent some other evidence. *In re Krappes,* 121 Wn. App. 653, 660-63, 91 P.3d 96 (2004); *see also Estate of Lennon v. Lennon*, 108 Wn. App. 167, 183-84, 29 P.3d 1258 (2001) (holding that stepson had no right to write checks to himself and his two sisters as gifts from his and his stepmother's joint account when stepmother was depositor and when she had not authorized the gifts).

When an owner of a joint account *with* right of survivorship dies, the share of the deceased account holder vests in the surviving account holder(s). RCW 30A.22.100(3); *Doty v. Anderson,* 17 Wn. App. 464, 466-467, 563 P.2d 1307 (1977). Joint accounts *without* right of survivorship, however, are dealt with differently at death. With such accounts, the funds are always held proportionate to each account holder's contribution—during their lives and after one joint account holder dies. RCW 30A.22.090(2). Upon the death of one of the account holders, that person's funds belong to his or her estate, not the other account holder. RCW 30A.22.100(2).

Many times, bank accounts are established as joint accounts with right of survivorship with little thought as to the ramifications, namely, that the surviving owner will be entitled to all the funds in the account upon the death of the other owner. Parents and children often establish these accounts for convenience, and bank officers have been known to recommend such accounts as a way to avoid probate. While it is true that such accounts can avoid probate as to the funds in that account, the post-death ramifications can be contrary to the primary account holder's intent.

The case of *Taufen v. Estate of Kirpes,* 155 Wn. App. 598, 230 P.3d 199 (2010), presents a classic situation. In that case, a woman went to her bank to establish a joint account with her friend. Without telling her, the banker established a joint account *with* right of survivorship. She subsequently executed a will giving her friend her house, but giving other specific bequests and the residue of her estate to various charities and other individuals. Due to certain unexpected deposits, the joint account grew significantly prior to the woman's death. After her death, the friend sued the estate, claiming that the funds were his. The law presumes that the funds held in a

joint account belong to the joint owner after the death of the other account holder, but this presumption is rebuttable. *See* RCW 30A.22.100(3). In this case, the estate successfully rebutted the presumption by presenting evidence that the decedent only asked the banker to set up a joint account, but they never discussed whether it would be with right of survivorship.

An administrator may ask a financial institution for the initial account paperwork establishing the account, in order to investigate how the account was established. If the financial institution or surviving account holder does not cooperate, the Trust and Estate Dispute Resolution Act (TEDRA) provides a judicial avenue for obtaining the information. *See* RCW 11.96A.030(2)(g)(iii). For the surviving joint owner of the account, obtaining the funds can be very simple. Normally a bank will only require a certified copy of the death certificate of the deceased joint owner to transfer the funds to the survivor.

Pay on Death (POD) Bank Accounts. A pay on death designation (also known as a POD account) is a way to designate a certain person to receive the funds in a bank account upon the death of the account holder. *See* RCW 30A.22.050(5) & 30A.22.040(18). A POD designation has advantages and disadvantages over the traditional joint tenancy account. A POD designation brings more certainty regarding the account holder's wishes upon his or her death. However, the person who is designated on a POD account cannot access or help manage the account like a joint account holder could. Of course, this lack of control can be overcome by executing a power of attorney whereby a family member or friend can manage the account if the main account holder becomes incapacitated. A certified copy of the owner's death certificate is usually sufficient to obtain the funds.

Transfer on Death (TOD) Brokerage Accounts and Securities. Washington State specifically authorizes the use of transfer on death (TOD) and pay on death (POD) designations for securities and security accounts, aka brokerage accounts. Ch. 21.35 RCW. The statute states that such a designation can take the form of "John Doe TOD [or POD] to John Doe, Jr" or "John Doe transfer on death [or pay on death] to John Doe, Jr." RCW 21.35.025. Such designations can be changed at any time during the owner's life without the consent of the TOD designee. Note that in addition to TOD designations, the law permits the owner to create a joint account with right of survivorship with a brokerage house.

To determine whether a security account is a TOD account (or a joint account), the administrator should request a copy of the application form and review it. The designations on

the quarterly statements are not always reliable. Like bank accounts, a certified copy of the death certificate should be sufficient for a beneficiary to obtain access to the security accounts.

Individual securities may also be issued with a TOD designation. Upon the death of the owner of the security, the beneficiary must contact a transfer agent for the stock, such as Compushare, to re-register the security. Completion of the transfer agent's application process, along with certified copy of the death certificate, will be needed to re-register the security in the name of the beneficiary.

The administrator should also determine the date of death value of the individual securities or security account. Brokerage companies are accustomed to providing the date of death values for brokerage accounts they are holding.

U.S. Savings Bonds. U.S. Savings Bonds can be transferred outside of the probate process in a couple ways. First, if two people are named on the bond, the survivor becomes the owner of the bond. The survivor can redeem the bond for cash or can have the bond reissued in the survivor's name alone. The owner may also register the bond payable on death to another person. RCW 11.04.240. Also, if no probate will occur and the bonds do not exceed $100,000, the next of kin can make application for the liquidation or transfer of the bonds through the use of FS Form 5336. The Treasury Direct website (treasurydirect.gov) is a good source for questions on transferring U.S. Savings Bonds and where the various forms can be found.

Revocable Living Trusts. Revocable living trusts (RLTs) have been traditionally used and marketed as probate-avoidance devices. These trusts are very common in states like California where the probate system tends to be expensive and arduous. On the other hand, in Washington, where the probate process is less costly and complex, RLTs are not as widely recommended by practitioners. Still, many older clients may still have these devices.

To use a RLT effectively, property owners must ensure that all their presently owned probate assets (real property, bank accounts, vehicles, etc.) are titled in the name of their RLT. Usually, an attorney will assist in the initial titling process to ensure that this is done properly. However, at times – well after the trust was created by their attorney – clients might acquire property or create a bank account and forget that it also needs to be titled in the name of the trust. Depending on what the asset is, obtaining this asset could require a probate. RLTs are usually coupled with pour-over wills that will capture such property. The pour-over will states that all

assets that are not in the RLT are transferred to the RLT upon the death of the testator. But to make this transfer, a probate is sometimes needed.

If done properly, however, upon the death of the creator(s) of the RLT, the beneficiaries receive a possessory interest in the property and the various assets are transferred by a successor trustee. For instance if a house is owned by a RLT, then the successor trustee will execute a deed transferring the property to the beneficiaries or selling the property as any other owner would. The same would be true with bank accounts in the name of the RLT. The successor trustee would take over the account or transfer the account to another trust account to properly administer the closing of the trust.

The process of administering the trust involves many of the same steps as a probate, minus the court involvement. For example, creditors and taxes would need to be paid and the successor trustee would be responsible for locating all trust assets and giving the beneficiaries adequate notice of the activities of the trust. Successor trustees need to carefully follow Washington's trust rules. *See* Chs. 11.98, 11.100, 11.106 RCW.

Community Property Agreements. The primary reason most spouses execute a community property agreement is to avoid probate on the death of the first spouse. Such agreements typically declare all presently-owned and future-acquired property as community property. More importantly, however, they also declare that upon the passing of one spouse, all the community property will pass to the surviving spouse (the "third prong" of the classic community property agreement).

Upon the death of the first spouse, this instrument can be used to access and obtain the deceased spouse's assets, including funds in a decedent's bank account, and to transfer and obtain securities. To transfer title to real property from the name of the two spouses to the one surviving spouse, the agreement needs to be recorded with the county recorder's office, along with a certified copy of the death certificate. WAC 458-61A-202(8)(a). It's also recommended that an affidavit be recorded that affirms several facts, including that the agreement is still in effect. Excise tax is not due on the transfer. WAC 458-61A-202(4). Banks and transfer agents will often also require a certified copy of the recorded community property agreement, death certificate, and affidavit to transfer the asset to the surviving spouse. *See* RCW 30A.22.190(1) & RCW 11.02.120.

Community property agreements are powerful tools. These agreements override contrary designations in a will, joint tenancies, and other designations. *See Estate of Lyman,* 7 Wn. App. 945, 503 P.2d 1127 (1972), *affirmed by* 82 Wn.2d 693 (1973), and *Lyon v. Lyon,* 100 Wn.2d 409, 670 P.2d 272 (1983).

III. Assets that Act as Nonprobate Assets

Three common assets that act as nonprobate assets are actually exempted from the definition of nonprobate assets in RCW 11.02.005(10): employee benefit plans, life insurance policies, and annuities. The effect of this exemption is to take these assets out of the list of nonprobate assets that can be used to pay creditors and expenses of the estate under RCW 11.18.200.

Beneficiary Designated Employee Benefit Plans. A common form of nonprobate asset is the beneficiary designated retirement account, such as a 401(k). A full discussion of the complexity of retirement account designations is well beyond the scope of these materials. A good investment for practitioners who work in this area is Natalie Choate's *Life and Death Planning for Retirement Benefits*.

Estate administrators will often have little involvement with transferring retirement plans. If the decedent properly designated beneficiaries, the plan will need a certified death certificate. It will then offer the beneficiaries a range of options on how to transfer the plan. If the beneficiary is a surviving spouse, he or she will have the option of creating a new account in the surviving spouse's name. If the beneficiary is not a spouse, the beneficiary will have the option of rolling the plan into an inherited plan. Cashing out the plan is usually also an option, but for tax-deferred accounts, this can sometimes have a large tax impact on the beneficiary for the year the beneficiary cashes out the plan. If a decedent has named a trust as the beneficiary of the account, the administrator should remember that the plan administrator must receive a copy of the trust documents no later than October 31 of the year following the year of death.

When "the estate" is named as a beneficiary, which is rarely advisable, no estate heir will be able to roll the account over into his or her own retirement account (as for spouses) or into an inherited account (for other beneficiaries). Instead, the account will be required to be distributed within five years following the participant's death. This five-year rule applies even if the decedent's will had a single beneficiary.

Conflicts often arise with retirement plan administration when a plan participant has failed to update his or her designation after a divorce. Under Washington law, dissolution of marriage revokes all prior beneficiary designations to the former spouse. RCW 11.07.010. But the federal law that governs many retirement accounts (known as the Employee Retirement Income Security Act ("ERISA")) has no such rule. If the employee-spouse were to die with the former spouse as a beneficiary, ERISA requires the plan administrator to follow the designation, notwithstanding state law. *Egelhoff v. Egelhoff*, 121 S.Ct. 1322 (2000) (holding that ERISA's requirement that the plan administrator pay out the policy to the beneficiary designated on the plan documents pre-empts Washington's law that revokes designations of a former spouse); *see also Lundy v. Lundy*, 187 Wn.App. 948, 352 P.3d 209 (2015) (holding that estate could not recover ERISA-governed benefits from beneficiary after distribution from plan administrator). If this issue arises, the administrator will need to investigate the plan to ensure that the plan is truly governed by ERISA. While ERISA applies to all 401k plans, it does not apply to many IRA plans.

Life Insurance and Annuities. Beneficiary designated life insurance policies and annuities are also exempted from the definition of "nonprobate assets." RCW 11.02.005(10). They still pass "outside of probate" if a beneficiary is properly designated, and are therefore technically "nonprobate assets" even if they do not meet the statutory definition of the term. Because life insurance policies and annuities are not defined by statute as a nonprobate asset, the beneficial interest passes free of creditors and free from liability for the expenses of the estate. Therefore, such instruments can be especially effective for families with large amounts of debt. Of course, failing to properly designate a beneficiary might result in the life insurance policy or annuity passing to the estate, and thereby becoming a probate asset, subject to the rights of creditors and estate expenses.

Following the death of the insured, obtaining the proceeds of a life insurance policy can be relatively simple for beneficiaries. Forwarding a death certificate to the insurance company and completing its paperwork should be sufficient to obtain the funds. Sometimes, the company will deposit the funds into a bank account with the insurance company and send the beneficiary a checkbook to use.

When the beneficiary is not the surviving spouse, issues of community property can arise. When community funds are used to pay the premiums on a life insurance policy, the community

has an interest in the proceeds of the policy. If the life insurance policy is a term policy and the final payment before death was with community funds, the surviving spouse will have an interest in half of the proceeds regardless of the beneficiary designation – also known as the risk payment doctrine. *Aetna Life Ins. Co. v. Wadsworth,* 102 Wn.2d 652, 659, 689 P.2d 46 (1984). On the other hand, if the policy is a cash value policy, the "apportionment rule" applies. Under this rule, "[o]wnership of the proceeds will be separate property or community property in proportion to the percentage of total premiums which have been paid with separate or community funds." *Porter v. Porter,* 107 Wn.2d 43, 49, 726 P.2d 459 (1986).

As with ERISA pre-emption issues involving employee benefit plans, practitioners should be aware of federal pre-emption involving insurance policies of federal employees. In *Hillman v. Maretta,* 133 S.Ct. 1943 (2013), a federal employee failed to remove his ex-wife from his Federal Employees' Group Life Insurance policy. After he died, the policy was paid to the ex-wife. Like the Washington law in *Egelhoff*, *supra,* Virginia had a law that revoked such designations. But Virginia law tried to "work-around" the federal pre-emption: it allowed the parties who would have otherwise received the policy—had it not been for federal pre-emption—to sue the party who received the funds. The Supreme Court held that this Virginia law too was pre-empted by federal law.

With the help of the beneficiary of the account, the administrator should request a Form 712 from the insurance company, which will provide a date of death value of the account.

An annuity is a type of insurance product and can have widely different features depending on what type of annuity a person buys. Generally, however, after an annuity is purchased, the annuity pays the annuitant an amount on a periodic basis, the amount of which can be varied or fixed over the payout period. The annuitant can choose to defer the beginning of the payments until, say, retirement, or begin receiving payments immediately after the purchase. In addition, the sums paid can be for a fixed period of time or only for the life of the annuitant.

Often annuities have an option in which the owner can name a beneficiary who is entitled to receive any amounts that are unpaid at the death of the annuitant. The estate administrator should notify the insurance company of the death of the annuitant. Any beneficiary will then be notified of the options, if any, for continuing the annuity payments. Typically, there are three possibilities for a payout. If there is no beneficiary, or the beneficiary is the estate or (unlike IRA rules) a trust, then the full payout must be made within five years following the death of the

annuitant. *See* 26 U.S.C. § 72(s). If there is a named, human beneficiary, then that person may choose a lump sum payout or a payout over time, but the payout cannot be longer than the beneficiary's life expectancy. *Id.* The deferred income received by the beneficiary will be considered income of the beneficiary and taxed at his or her tax rate. The deferred income from the annuity does not receive the step-up in basis that most other assets receive after the death of the owner.

IV. Special Issues Involving Nonprobate Assets

Resolving Disputes. When a dispute arises involving a nonprobate asset and negotiations fail to resolve the dispute, TEDRA offers an avenue for the administrator. TEDRA gives courts broad powers to administer and settle "[a]ll matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving nonprobate assets…." RCW 11.96A.020.

The definition of "matter" in TEDRA encompasses the many issues that might arise involving nonprobate assets. TEDRA specifically permits an administrator to seek a court order resolving disputes over how a nonprobate asset would be used to help pay creditors, or whether a nonprobate asset should be re-characterized and brought into the estate. It can also be used to require a custodian to provide certain information regarding an account. RCW 11.96A.030(2)(g).

In *Wegner v. Tesche,* 157 Wn.App. 554, 237 P.3d 387 (2010), the personal representative filed a TEDRA action seeking to have land re-characterized from joint tenancy to tenants in common. In the case, Wegner and Tesche owned a parcel of land as joint tenants with right of survivorship. After Wegner's death, the personal representative suspected that Wegner had not intended for title to be held in this way, claiming that the decedent intended it to be tenants in common. The estate filed a TEDRA action, asking the Court to re-characterize the ownership and require the asset be used to pay its pro-rata cost of estate administration. After the investigation revealed insufficient evidence to re-characterize the ownership, the personal representative dismissed that claim, but continued to allege that the nonprobate asset should bear its share of the estate administration, including the cost of the investigation. The trial court ordered, and the appellate court affirmed, that the nonprobate asset would be responsible for half of the estate expenses, including the attorney fees used in investigating the correct characterization of the asset. *Id.* at 560.

Abatement and Nonprobate Assets. An estate administrator is responsible for administering probate and nonprobate assets under his/her control. RCW 11.48.010. Nonprobate beneficiaries should be aware that sometimes asset that they received can be used to pay the decedent's estate expenses and creditors. RCW 11.18.200. Abatement is the way in which an estate's assets are expended to pay these debts. Under Washington's abatement statute, absent different instructions in a person's will, nonprobate transfers are typically considered a "specific bequest," and therefore used to help pay the debts after all other assets. But in a situation where the nonprobate transfer does not involve an identifiable asset, such as when assets generally pass through a revocable living trust or a community property agreement, they are to be categorized as whatever "is most closely comparable to the nature of the transfer of that interest." RCW 11.10.040(2)(b).

Because most nonprobate assets would be considered specific bequests under the abatement statute, RCW 11.10.040(2)(a); *see also* RCW 11.18.200, those assets will typically be protected, that is, unless the estate is heavily indebted or the estate is primarily comprised of nonprobate assets. The proceeds from life insurance policies, annuities, and employee benefit plans, however, are exempted from the abatement statute. Therefore, heirs take these assets free of creditors and the expenses of the estate. RCW 48.18.410; RCW 6.15.020 & RCW 11.18.200(h) & (i).

Superwills. Washington law includes a unique chapter that permits a person to create a will that overrides certain nonprobate designations that were made prior to execution of the will. This is commonly referred to as the "superwill statute." Ch. 11.11 RCW (formally referred to as the Testamentary Disposition of Nonprobate Assets Act).

The superwill statute does not cover all nonprobate assets. It covers nonprobate assets described in RCW 11.02.005, but specifically excludes (1) real property passing under a joint tenancy with right of survivorship, (2) a deed or conveyance for which possession has been postponed until the death of the owner, (3) a transfer on death deed, (4) an interest passing under a community property agreement, and (5) an individual retirement account or bond. RCW 11.11.010(7).

Under this law, the following language would be satisfactory to pass nonprobate assets to the beneficiaries in the will: "all nonprobate assets," "all of my payable on death bank accounts," or similar language. RCW 11.11.020(3).

If the owner of an account later changes the beneficiary designation on the account, that subsequent designation will control the disposition of the asset, not the superwill provision. If the owner later revokes the subsequent designation and there is no designation to control how the asset is to be distributed, it will be distributed pursuant to the general terms of the owner's will.

While this seems straightforward, it is easy to create ambiguities that lead to litigation. In *Estate of Burks v. Kidd,* 124 Wn.App. 327, 100 P.3d 328 (2004), a decedent had created two Pay on Death bank accounts, but later drafted a will with the following language: "I have certain bank accounts and savings accounts and may in the future have other evidences of property which are or may be in the joint name of myself and one of my children. Such designation is for business convenience only and is not intended as a gift to such child." The residuary beneficiaries of the will claimed that this language changed the nonprobate status of the POD accounts. The court disagreed, reasoning that the language in the will does not specifically refer to the POD accounts, nor does it identify an entire category of nonprobate assets. The POD accounts remained nonprobate assets and not controlled by the superwill provision.

Tax Issues. An administrator cannot ignore nonprobate assets when calculating the value of a decedent's estate. All assets are included in determine whether a decedent had a taxable estate. Therefore, the administrator should gather the values for all assets. If any recipient or custodian of an asset refuses to provide the date of death value of a nonprobate asset, the administrator should consider using or threatening TEDRA to force disclosure of the information. For taxable estates, the apportionment of the tax burden on the assets of the estate is governed by Chapter 83.110A RCW.

Beneficiaries who will be retaining property that was previously held in joint tenancy or through a beneficiary deed should obtain an appraisal on land to establish a cost basis in the asset. A beneficiary who receives property from a beneficiary deed gets a full step up in the cost basis upon the death of the owner. On the other hand, when a joint owner of real property receives the deceased owner's interest, the joint owner only gets a step up of the deceased's owner's interest in the property.