

Wills, Trusts, Powers of Attorney

Notes from Terry Crow's Presentation

On May 10, 2008

Introduction: Terry has more than 15 years experience in the legal and financial services industries. The majority of that experience accrued during his tenure as President and CEO of the Edward Jones Trust company, an entity that Terry created and grew for Edward Jones. Terry was also responsible for the Financial Planning Department of Edward Jones and in that capacity he has given lectures to brokers, management, and clients throughout the United States. Terry was also President and CEO of the Guaranty Trust Company of Missouri and Senior Vice President of the Financial Counseling Division of United Missouri Bank, along with a law practice in Jefferson City. In St. Louis, he is currently the managing partner of the law firm Crow & Takacs.

An active volunteer with a partner and children, Terry also serves as Chairman of the Board of Directors of Doorways.

The following are notes taken during the presentation made by Terry Crow in his address to the members of Prime Timer's at their monthly meeting.

How should you title your property?

1. Disadvantages of a title in your name only
 - a. Examples of property: brokerage account, car, boat, real estate.
 - b. Consequences when you die – Probate. Avoid probate!
 - i. Probate takes six months to a year to distribute property to your heirs.
 - ii. Probate incurs significant legal costs. Required statutory fees = 3% of your property's value.
2. Legal instruments for avoiding Probate
 - a. TOD = transfer on death. This title (used for brokerage accounts or cars) allows whomever you designate to take possession of your property when you die. The property does not have to go through probate.
 - b. POD = possession on death. This title (used for bank accounts) is similar to the TOD. The bank account with a POD title does not go through probate. When you die, it goes immediately to whomever you have designated.
 - c. Beneficiary Deed (Missouri only). Upon your death, your beneficiary shows the deed and your death certificate and a new deed can be immediately prepared. The property does not go through probate.

Why do you need Durable Powers of Attorney?

1. **Need for Durable Powers of Attorney**
 - a. We are living longer and our minds don't always keep up.
 - b. Sometimes we need someone with the legal right to make decisions for us.
 - c. Durable Powers of Attorney are completely private documents. They only become public if your designated decision-maker uses the power to sign for property (in a real estate transaction).

2. **Springing Durable Power of Attorney**
 - a. This requires a doctor's signature before the power of attorney can be exercised.
 - b. This is generally used by individuals who don't want powers of attorney excised unless a doctor says they are not competent to make their own decisions.
 - c. The "Springing" clause should be removed later in life. Unfortunately, when we are becoming incompetent, we often become the most resistant to giving up control over our affairs.

3. **The need to renew Durable Powers of Attorney**
 - a. Major financial institutions such as insurance companies, banks and brokerage firms will not honor a Durable Power of Attorney that is older than 5 years old.
 - b. Renew these documents every 5 years.
 - c. In 5 years, you may need to make some changes.
 - d. If no changes are required, your lawyer should print out a renewed copy at little or no cost. The lawyer only needs to change its date and hit the print button.

4. **The need for original copies**
 - a. Major financial institutions such as insurance companies, banks and brokerage firms will not accept copies of Durable Powers of Attorney.
 - b. When traveling, you should take an original with you.
 - c. Originals should be held by the following:
 - i. You should keep one with you. (Never put them in a safety deposit box. They are too difficult to extract.)
 - ii. Your decision-maker should have an original.
 - iii. Your lawyer should have an original. If you get in a jam, financial institutions will accept a fax from your lawyer.

5. **Two main types of Durable Powers of Attorney**

- a. Durable Power of Attorney for financial decisions.
- b. Durable Power of Attorney for health decisions.

6. Durable Power of Attorney for Health

- a. Gays need to be proactive with respect to health issues.
- b. If a gay partner does not have a durable power of attorney for health, critical health decisions will be made by the next of kin (this is legally required). A gay partner will not be allowed to make critical health care decisions for their partner unless they have this document.
- c. It should be renewed every 5 years to insure that it will be honored by the hospital.
- d. The original document should be kept in the night stand next to the patient's bed so that it is readily accessible.

When do you need a Revocable Living Trust

1. TOD is not enough.

- a. If you have complicated property holdings.
- b. If you have complicated family relations
- c. Under these conditions, you probably need a Revocable Living Trust.

2. With a Revocable Living Trust, probate is avoided.

- a. All property is titled in the name of the trust.
- b. Upon death, all property so titled is distributed precisely as you specify.
 - i. Individual items going to particular persons.
 - ii. Specified percentages of the trust going to each heir.
 - iii. Etc. The trust gives you complete flexibility in distributing your property.
- c. None of the property owned by the trust goes through probate so it can be distributed fairly quickly.