Is Your Money Really Going to Your Kids?

Q: My son died a few years back with two young children. He and his wife were having some problems, and his broker told him to simply make a "transfer-on-death" of all his financial accounts directly to his children and that would fix things. Yet all of the money ended up in my daughter-in-law's hands. How did that happen?

A: Your son was given poor advice.

Using a transfer-on-death provision may be fine in certain cases, but taking such a "shortcut" in legal planning doesn't always work so well, as you have found out.

First, keep in mind that since your son was still married at his death, he should have been informed that his wife could claim an "elective" share upon his death. This means she has a legal right to get a portion of his money, even though only the kids were named on the transfer-on-death form.

She will have no obligation at all to use this portion of the money for the children, and there is no guarantee the children will see any of it.

Second, even that portion of the money that is mandated for the children will pass to them through a law that uniformly governs how transfers of assets to young children shall occur. Under that law, the custodian of the assets is generally the guardian of the children.

This, of course, was your daughter-in-law.

So she legally ended up with all of the money "in her hands" even though this is exactly what your son was attempting to prevent.

The solution to this problem is to create a legal plan whereby your son himself chooses who would handle the children's portion of the money, and then link the financial accounts to that plan.

Naming a minor child as a transfer-on-death beneficiary on a financial account is never a good option, and I am sorry this happened to your family.

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