

# The Corsaro Commentary

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## WHO GETS MY PROPERTY WHEN I DIE? (Part 1 of 2)

In developing an estate plan that accurately reflects your estate planning objectives, it is necessary to understand the means by which assets pass at death, and the basic tools for carrying out your objectives. Your estate planning objectives probably include a desire to: (1) make sure your assets pass to your intended beneficiaries at your death; (2) reduce legal expenses and any applicable income and transfer taxes; (3) protect assets from claims of creditors; (4) make sure dependent children are properly cared for; and/or (5) encourage or discourage specific conduct.

How your assets are titled during your lifetime is the key to determining who will get those assets when you die. Your assets will pass at death via one of three means: (1) by operation of law; (2) under the terms of a contract; or (3) under state probate laws.

Assets passing by operation of law or under a contract are considered “non-probate” assets because they are not subject to administration in probate and are usually not affected by a will or intestate succession laws. Assets that are subject to probate proceedings are often called the “probate estate” and pass according to a decedent’s will or, if there is no will, under state intestate succession statutes.

1. **Non-probate Assets.** Assets that pass by right of survivorship or by beneficiary designation are called “non-probate assets” because they are not subject to legal proceedings in the probate court.

- **Operation of Law:** Some forms of property ownership determine, by legal definition, who will immediately succeed to a deceased co-owner’s interest in the property. Examples include joint tenancy, property with a right of survivorship, life estates, and assets held under state laws that permit a “pay on death” or “transfer on death” designation. In these situations, legal title passes as of the instant of death.

- **Contracts:** You can arrange to have money or other assets transferred to designated beneficiaries upon your death under various contracts, including life insurance, trusts, retirement benefits, annuities, partnership agreements, and stock-purchase (“buy-sell”) agreements. The beneficiaries’ rights spring into being at the moment of your death.

2. **Probate Estate.** All of your assets that do not pass by operation of law or by contract pass through probate proceedings (if you leave a valid will) or intestacy proceedings (if you die without a will). Probate and intestacy proceedings are the court proceedings required by law to transfer the assets of a decedent that do not pass by operation of law or contract. A will may clarify and simplify the probate process, but a will does not alleviate the need for the probate.

***[Part 2 of this article will deal with the estate planning tools necessary to achieve your objectives.]***