TRANSCRIPT:

Mary: On today's episode. My guest is Stacie Neussendorfer. Stacie is a senior lead advisor with Foster Group. She has significant experiences, both in estate planning and attorney and in wealth management. Stacey has been on a previous episode where we discussed issues specific to physicians in estate planning. Today, we're going to talk about some of the issues that apply to all estate's plans related to coordinating financial assets in estate planning. Welcome back, Stacie. I really appreciate you joining us. I think one of your real strengths is that you have seen estate planning and financial planning from various perspectives. So, when you and I talk about the estate and financial planning world, I always find a fairly holistic response from you in terms of how you approach it, which is something I appreciate. One of the challenges in estate planning is making sure that the estate plan is coordinated with the financial assets. You can have a great estate plan, a great trust, great documents, but if you don't coordinate the assets, your testamentary intentions don't get effectuated. So, let's focus first on your typical agency account and the various ways that an account owner can pass that asset from owner to beneficiaries.

Stacie: Thanks Mary. So, an agency account is, is really a non-retirement account. It is, we call it an after-tax account where you invest assets the beauty of an agency account is that it's always accessible to an individual. There are no restrictions as there can be with retirement accounts and so titling is so very important. I could tell horror stories as a trust officer where, you know, thousands of dollars were spent on a beautifully drafted estate plan, but the titling was never completed or was done wrong and so it's really something that you cannot ignore when you're setting up accounts or when you create an estate plan and so an account can be titled in the individual's name with a simple T O D, which stands for transfer on death designation. So, you could say transfer on death to my trust. That might be another episode as to why it's better to name it in your trust, but that is an automatic transfer upon death to whomever is named. So, it could be an individua or individuals or your trust. You can have an agency account, be jointly titled husband and wife other, other people related people, non-related people so it can be joint and, in that case, when one person dies, it immediately passes to the survivor, or you can title it in trust. So, we always counsel clients one of the first questions I ask is, you know, do you have an estate plan? And

can I read it? And if they have a trust, then we want to make sure that their accounts that we manage for them are titled in their trust. One of the things I should circle back to about a joint account is I did mention, you know, it's sort of the last person standing gets to take the account, but if the intent was that ultimately that account was to say, go to children or another individual. It is important to remember that the last person standing then has control over that account and they can name whatever or whichever beneficiaries they choose to. So, you know, you may have a husband and wife with a first marriage, and they agree that, you know, ultimately this is going to go to the kids, but maybe down the line, wife passes away and husband remarries. So that may completely change the direction of where that account is going to go or how it's titled.

Mary: One of the other horror stories and we I'm sure we both have lots of horror stories on account titling, right? This is why, you know, I was grateful that you led with this particular issue because it's, oh, the account titling is just, and it becomes so interesting, but I've seen somebody take like an agency account with a significant amount, let's say a couple million bucks and what they do is mom or dad is starting to get not well and so they're like, well, let me just add you to the account as a joint owner so that you have access and so, first of all, what happens is then mom dies and daughter one of say, six kids is now the owner of that account. Now, even if that daughter is not intending that she's going to take that money and run, if she's going to put it back into the trust or give it to her siblings, she might be making a taxable gift for a stay tax purposes.

Stacie: Absolutely. So that's one of the things people I'm just going to use a joint tendency to make this really easy and the other thing I always say is like, what happens? We talked about that, you know, you spend a lot of money to do a great estate plan and we don't have things coordinated. So, you think that everything's passing through your trust. People forget that you have assets that pass through the trust and pass outside of the trust and that's why we really have to look at the big picture. I like to do little flow parts, my example is, let's say, you know, Mickey Mouse, one of my favorite characters wants to leave a million dollars to Jane Doe. I couldn't decide which Disney character you. So, it's certainly simply Jane Doe. So, Mickey puts a provision in his trust and says, I want this million dollars to go to Jane. His will says all of my assets go to my trust. So, he's thinking great. So, when

he dies, he has only a million dollars in the agency account, but the agency account has a transfer on death provision that names John Hawkins as the beneficiary. So, is Jane going to get her million dollars? No.

Mary: And so why is that?

Stacie: Because John Hawkins was named as the beneficiary of the agency account. And so, in this case, that agency account, again, either needed to be titled in the name of the trust or with a transfer on death designation to the trust.

Mary: So, another type of financial account to coordinate is the IRA. So that's one of those assets, again, that passes only by contractual designation. So we're with the agency account, we have these various choices, individual transfers on desk and what I see sometimes people title the, the agency account and trust, and then there's still the T O D the T O D wins, right, because it's a contractual designation and so that's, I say, you got to check to see if there is a T O D and make sure the T O D is revoked so that if we're using the trust, or as you mentioned earlier, you can also have a transfer on death provision to the trust, but you've got to look to make sure that you don't get caught off guard, but the other one is the IRA. So, the IRA passes by contractual designation. What are the common issues you see in coordinating the IRA accounts?

Stacie: You know, one of the biggest things we see is when a divorce or a death occurs, those beneficiary designations do not get updated. So, in the case of divorce, because it is a contractual obligation, you could still see assets go to that prior spouse which we've had some clients run into that situation and it is you have some very, very unhappy people. Usually, the second spouse who is quite unhappy. So, when you have life events like a marriage, a birth, a death, a divorce, this is the prime time to think about your beneficiary designations and your overall an estate plan. Other things that happen with beneficiary designations is if you have, you always have a primary named, so the person who gets the money first, but if that person should predecease the owner, then you want to have contingent beneficiaries and oftentimes people name their spouse, and then they name their children. Where we run into problems is if again, kind of like we talked about the agency account, if the intent is for the children to be the eventual takers of this account but the say the owner of the account dies first and so

then the spouse takes that spouse controls that contract. So, to speak, they have free reign to put whomever they want as a beneficiary on that policy. So, it's important to always be thinking about how your beneficiary designations read in relation to your overall intent of your estate plan. I've had parents you know, and this just not even a retirement plan, like a CD at a bank who I knew what their trust said and how their estate plan worked out yet, we have CDs over at a bank with one of the children named as a co-owner or a beneficiary and, you know, I'm saying, you realize this is contrary to what you have written in your plan. Was that your intent? Oh, well, don't worry about it. You know, child will share with the other children, and it'll be okay, which never happens,

Mary: Creates a fodder for trust and estate litigators. Yes. Right. So, one of the other things on the beneficiary, you point out the meaning of contingent. And I think people are really miss that primary beneficiary and that contingent beneficiary, that contingent are the takers only if the primary beneficiary is not living. So if dad names mom as the primary beneficiary and mom remarries, she can go on and name her new husband as the beneficiary of that IRA and so that's the difference between contingent and say, successor beneficiaries, if somebody takes control of the account, and there's some ways to prevent that, which we won't go into details today, but it's something you really need to understand and make sure you're working with somebody who knows how the beneficiary designation really works. Another area that I see, and, and a lot of times in second spouse situation. So, you're trying to figure out how do I take care of kids from my first marriage, take care of my second spouse, and not set up a big litigation. Like one of the things that I've seen that I used to draft, and now I'm like just, I don't want to draft that is okay. I'm going to have my second spouse live in my house as long as she's alive and then it goes to my kids by the first marriage. Well, the minute she's dead, the kids are hoping that she dies so they can get the value of the house and I'm not saying that's not true about every kids, but that could happen. Sure. Because they want their inheritance. So just try not to put people in a position where they're wishing somebody dead, when you structure their estate plan, that's kind of become, my policy is like, okay, now I realize that if you do this, then these other beneficiaries are going to benefit by this person dying. So, do we really want to have that strategy in place? But one of the things is like generally is a good example. Might be that somebody

says, okay, I get that and what I'm going to do is say, okay, I want say maybe my real estate to pass to my children from my first marriage and I'm going to pass that through my trust and then I have this IRA out here and I'm going to have this IRA passed to my second spouse. So that's really clean. I've taken care of the kids. I've taken care of my spouse and if she takes that IRA and gives it to her kids or somebody else, I'm okay with that. That's the part that I'm just willing to give to her that I don't need to have go to my children. So, everybody's been taking care of, but in that type of structure, what happens if the IRA beneficiary designation doesn't get completed?

Stacie: So, in that case, if there's no beneficiary designation, it becomes a, an asset of the estate. It would likely have to go through probate, which with a trust, with a pour over will, it goes through probate under the will then pours over into the trust and then it's subject to the dis provisions the trust. So, depending on how that trust reads that will determine where that, that asset goes.

Mary: So, there can be the accidental didn't get the beneficiary designation completed and some of the best practices is the minute you finish the estate plan, get a letter off establishing what you want to have happen is beneficiary designation. So somehow the paperwork there's at least evidence of that, right. But the other area is you have to think about if you're doing this type of estate planning is who your power of attorney is and what powers they have. So say we have this, the same estate plan where we have Tim and he wants his spouse to be the beneficiary of the I and his kids get the real estate and then he executes the power of attorney and he names his children as his attorneys, in fact, rather than his spouse and he gives them the power to change the beneficiary designation, and then they decide they want to change that beneficiary designation while he's incapacitated and take the IRA and give that to the spouse. So that's part of the whole coordination as well. Right? You want to look at all of the different pieces and make sure they work together.

Stacie: That's absolutely correct, Mary, you know, and one of the things that I always encourage parents to do, and, and some are comfortable doing this and others are not is talk with your children or your beneficiaries about your wishes and your intent regarding where your assets are going to go when you're deceased if it's out in the open and everyone knows this is what I'm

supposed to get, and this is why dad is leaving me this or not giving me that at least those grievances can be aired during lifetime and possibly cut down on, you know, the squabbles or the sneakiness or whatever when that person is gone. I think many in my experience, many of the questions and the hurt feelings arise because a parent never communicated to their family what their intent or their wishes were and that child is left with questions and when I was a trust officer, I was the one usually across the desk from the child who had these questions like, well, why did dad do this? And why didn't he do that? And I just don't understand and often I didn't have the answers either. So, communication really can help head off some of these issues. Beneficiaries may not like the way things are going to shake out, but that's the way it is. It's not their money. It is the parents' money to choose to do what they want with it.

Mary: Okay, let's continue our episode. So early where you talked a little bit about life insurance and what happens if you get divorced in those beneficiary designations, it's correct that some states have revocation on separation or divorce statute. So that basically says if you file for divorce, the beneficiary designation is revoked. But then what happens with that is the life insurance similar to the Iris scenario, where that ends up going to the estate and you might not get the result you want.

Stacie: You know, that's correct. And the, the states with the revocation language is, , and Mary, you would probably know better than myself, but I think a relatively newer development across state laws and probably a result of a former spouse being left on a beneficiary designation and you know, and in some instances it's not a situation where, you know, maybe the owner of that policy just ignored it. I mean, you could have a tragedy occur very shortly after a divorce and a person just didn't have the time to get their beneficiary designations updated. So, when you have a life insurance policy with no designation whatsoever, again, that becomes a probable asset and so, you know, you may have somebody who had a trust who thought, okay, I'm not going to have to go through probate, you know, nice and clean and tidy, and we're going to be all done but you know, part of the work of settling a estate is looking for those assets out there that are perhaps had been forgotten or abandoned or didn't get updated and so in that situation the life insurance

company would say, well, we have to pay to the estate of say John Doe, which means in a estate has to be opened a personal representative has to be appointed and it just, it further delays the process and again, perhaps defeats the intent of the overall estate plan.

Mary: You do have to look at is in the divorce process is what can you do during the divorce and Sharon Kline who is an expert on that is going to be on one of the episodes and we'll fill us in on that. But one of the trends we are also seeing is this whole, how spouse is defined in testamentary documents and I think that's gotten really interesting seeing the, what people are well, the spouse is a person I'm currently married to you know, and if I'm not married, then there is no provision for any spouse type of stuff going on in the estate planning world. Well, let's talk about what I find. One of the more challenging topics when I run into them are annuities and estate plans. Can you explain, you know, a little bit about what an annuity is exactly and what we need to think about when we run into those.

Stacie: Absolutely Mary I, you know kind of full disclosure. I am again, not an annuity salesperson, so every annuity is different. It seems, but in the big picture, an annuity is basically a type of life insurance contract that in most instances offers the purchaser, the opportunity to invest money in a tax-deferred manner for an extended period of time and there are, you know, annuities typically fall into five categories, but basically four of them fall into two broad categories, either a fixed annuity or a variable annuity. A fixed annuity offers some sort of a guaranteed return, whereas a variable annuity has an investment component to it where the owner can sort of choose how a portion of their, their annuity dollars are invested and so that can go really well or that can go not so well but that's kind of the biggest breakdown on a big picture. The outlier is what's called a single premium immediate annuity and so this is an annuity where usually a I lump sum is paid to the insurance company to purchase this annuity and in return you get a fixed payment over the annuitant lifetime and so it's something that, you know, within a month or two of having purchased that annuity payments begin.

Mary: So, annuities are one of the areas where I've seen some of the challenges in terms of coordinating the estate plan and the financial planning and often, and a given example where we had a mom who had bought one annuity with intention, annuity, one was for one child, two was for the second

three. So, each were going to get an annuity. Well, one daughter becomes the power of attorney and decides to each of the annuities had some cash value and just started spending down the annuities that were for the other kids and keeping everything and asset number four in annuity number four and so to the extent that anything like that goes on, how can financial advisors and estate planners coordinate, and one of the issues there is that each advisor type in the estate planning realm, whether it's accountant or its financial advisor or attorney or insurance, it also varies by state. We all have different duties in terms of do our duties, run to the client. Some states there's certain duties that actually run to beneficiaries as well. Right. So how can we collaborate to make sure you talked a little bit about the testamentary intent and just letting people know what's going on. And the other reason for that is to protect that. So how can we play well together to make sure that the right things happen for the client or what they want to have happen actually happens.

Stacie: You know, Mary, you mentioned, you know, the duty of confidentiality and as in a financial advisor, you know, we are subject to that as well we have to keep our client's information confidential, but collaboration is really among advisors is really the key. I mean, we talked about that in an earlier podcast, how important it is to really have a person's advisors all at the table. So, nothing is lost in translation and people can freely communicate with each other and the way we accomplish that is we just ask clients, you know, do you have an attorney you work with, do you have a, an accountant that you work with? You have an insurance professional that you work with we try to document those names and then ask the client's permission to get a release so that we can communicate with that professional freely back and forth and so that is, is kind of the first step. The other thing is, you know, we try to in a financial plan, you want it to be as comprehensive as possible and so for that to work, you need to know all of the assets out there. So, we ask for a large volume of information and doing our planning, you know, any annuity policy, any insurance policy unique assets, artwork, coins, anything to toys, ATVs, you name it. So we want to make sure we capture everything in their planning and so when we know what is out there it's easier to, you know, sort of be flagged on if something is going awry and part of that is also getting a copy of, of a client's estate planning and being in touch with their attorney it's much harder for a sort of

bad actor to get away with things. If everybody kind of knows what's going on in your regular communication with your client it is hard though these days, with the baby boomers, aging more and more people are being diagnosed with dementia related issues and one of the things that's really a hot topic and in my industry is, , diminished mental capacity and elder abuse and, , so we received quite a bit of education on that, how to spot that, what should we do? , when I was a trust officer, I actually had a child prosecuted for financial abuse of his mother who had Alzheimer's. So, I guess, maybe hypersensitive to some of the flags or things that I think go awry. But what we are doing now is, and this is happening with, with investment custodians, like a Schwab or a Fidelity or a Vanguard, they're asking people for what they call a trusted contact form and at Foster Group, this is a new form that we started to employ that essentially asks a client. Look, if we, we are asking you to name a trusted contact, preferably not a spouse, but this is someone that if we can't reach you and we're concerned about your wellbeing, we could call and say you know, do you know where Mary is? We've had a hard time reaching her. We can't contact her, her mail is coming back to us all the way up to, we can share more information. You know, maybe if we do have a concern about you know, abuse potentially, or, or a client's mental capacity slipping, it's the client chooses what degree of information we can share with that trusted contact. Now, obviously if that trusted contact is the person who is also misbehaving that's, you know, going to be a problem. But I think, you know, the collaboration among everybody and knowing, you know, what the client's estate plan says and being in regular contact with the estate planning attorney you know, obviously if, if I don't have the ability to share information with the estate planning attorney, I can't call that person up and say you know when was the last time you saw Mary, it seems to me that maybe she's slipping a little bit, have you noticed that, you know, those kinds of things, so it's really, this is something unfortunately as, as we all age to be aware of and be mindful of, and try and take steps to prevent that. But ultimately, you know, I've seen too many parents and it, and it's not just children. It can be caretaker. Yeah. Is where we see a lot of it, A naughty neighbor, you know oh gosh, that's a whole different episode, a new friend, the handyman who cozied up to my very, wealthy and old lonely widow who couldn't read her statements and he saw the multiple zeros and next thing you know, they were in love. So, it is, it is a horrible thing and I think, you know, which is kind

of regular contact with your client is the best approach to, to being on top of that.

Mary: So, I just want to ask like one follow up on that. So, you made some really great points because that what I was going to ask is, and, and so it's not a lot of times we see it with the caretaker or the handyman or, you know some chicky decides to show up with an older guy who lost his wife or vice versa. Right. And I talked to clients regularly about, this is not a matter of trust. It's a matter of vulnerability as you age, as you develop health issues, things like that. So having those protections in place, so it sounds like the trusted contact is one of them. The other one would be because I always like that collaborative idea. The confidentiality issue is if all of a sudden, this caretaker starts showing up with a client on a regular basis and having making suggestions to you, we want to move this money. That's where, you know, I want to call in a heads up. So that's where we, we have to have that authorization to communicate, and I keep it updated because people change their advisors as well. But that's also as somebody's aging and vulnerable another red flag. Right?

Stacie: Absolutely. And like I said, I probably am hyper vigilant to that because my parents, I lost one parent to Alzheimer's and the other one is struggling with dementia and, and I've had clients who've been financially abused unfortunately and so it is, communication is key.

Mary: I think we share a passion on that topic as well as a few others. Do you have any last thoughts today, Stacy?

Stacie: You know, really just again collaborating is the key to, you know, a successful estate plan and reaching your goals and that's really how we prefer to approach working with clients and so, you know, with that, I'm just going to thank you again for inviting me to join you today. Mary,