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Message for Retirees—Take Care of the Ones You Love

by Rudy Wartella

There is a saying that the only things that are certain are death and taxes. Although none of us have discovered a way to defeat father time, some of us have not prepared our estates for our eventual death. An estate plan is a good idea for every adult. Although each of us should have an estate plan, the focus of this article is to benefit the U.S. military retiree who is married to a foreign national and decides to live in a foreign country after retirement.

Where do you want your property to go when you die? Many retirees living overseas become permanent residence of their spouses' home country and think that the laws of their new country will control and that everything will pass to their foreign spouse. This is not necessarily true. Some "property" passes outside of a Will and some property may pass outside the reach of your adopted country and will require probate in a US state court.

Bank or Credit Union Accounts. Do you want your account to go to your spouse when you die? If so, does your bank or credit union know this? Do you own your account jointly with your spouse? Is your spouse the beneficiary of your account? Does your spouse have a Social Security Number or a valid Individual Taxpayer Identification Number (ITIN)? It is not uncommon for the military retirees to die without having the spouse on the account. The spouse must then figure out how to obtain access to the account and this usually involves hiring a US attorney and going through some sort of probate process in the United States. This could all be avoided by making sure the spouse is the beneficiary of the account and has a valid Social Security Number or an ITIN.

What is your state of legal residence? Probate courts have jurisdiction over matters where you are domiciled, or where you own assets at the time of your death. Many military retirees lose any connection with any particular U.S. state, and it is hard to determine the state of legal residence or domicile. This could become important if probate is necessary. Do you still have a valid stateside driver's license? What state are you registered to vote in? Do you own any real estate in the United States?

Probate Assets/Non- Probate Assets: If you own your bank account in your name only, it will have to be probated. If you own stocks in your name only, it will have to be probated. If you own real estate in your name only, it will have to be probated. If you hold your bank account, stocks, or real estate jointly, then these assets do not need to be probated. Life insurance to a named beneficiary is not subject to probate. Retirement plans with a named beneficiary are not subject to probate.

If you have estate planning questions or concerns, please contact an estate planning attorney. Please do not burden your spouse in trying to unravel all your estate issues after you die.