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TRANSFERRING PROPERTY UPON YOUR DEATH

There are a number of ways an individual can transfer property to their loved ones upon their death. Depending on the age of the person(s) who will be receiving property or the dynamics among family members who are receiving the property, it is important to choose your method of transfer carefully.

LEAVE PROPERTY TITLED SOLELY IN YOUR NAME

(i.e. do nothing to plan for property after your death) If you do absolutely nothing to pre-plan for the transfer of your assets and your property is titled solely in your name at the time of your death, your property will need to be administered by the Court. This means that a Court will order your property divided among your surviving relatives according to the descent and distribution laws of Florida. It usually takes six months before all of your assets are distributed or up to over a year if your estate is subject to Federal Estate Tax.

ESTABLISH A LAST WILL AND TESTAMENT

Establishing a Last Will and Testament allows you to provide written instructions on how your property is to be divided upon your death. In your Will, you designate a "personal representative" of your estate, who opens the administration of your estate. With the supervision of the court, your personal representative will distribute your property as you have outlined in your Will. The process of administering your estate usually takes about six months (again, it can be longer if the estate is taxable). A Will can be advantageous as a Court becomes involved in the distribution of your assets to ensure family dynamics do not affect your testamentary wishes.

ADD A JOINT OWNER WITH RIGHT OF SURVIVORSHIP TO YOUR PROPERTY

Adding a joint owner with the right of survivorship to your property (a joint tenant) will pass 100% of that property to the joint owner upon your death. There is no administration necessary. This is often the way spouses choose to title their property. Joint tenancy can, however, be a problem. For instance, if a child is added to property and that child is later sued (divorce,

car accident, etc.), 100% of the property may be subject to the lawsuit. Joint property can also be tax disadvantageous. Joint tenancy supercedes any Last Will and Testament you may have executed.

ADD BENEFICIARY DESIGNATIONS TO YOUR PROPERTY

Adding a beneficiary designation (pay-on-death or transfer-on-death) to your real or personal property is another way to pass property. Again, 100% of your property passes to the person(s) you have designated as beneficiary. Unlike a joint owner, however, the beneficiary has no access to your property until you have passed away, thus avoiding any attachments of your assets by the beneficiary's creditors. Like joint tenancy, however, the beneficiary designations supercedes any Last Will and Testament you have executed. Life Estate Deeds are another similar method. Again, there are tax considerations.

ESTABLISH A REVOCABLE LIVING TRUST

A Revocable Living Trust is an estate planning document which allows an individual to direct another person (the Trustee) to distribute property upon their death, according to specific wishes. A Revocable Living Trust is administered by the Trustee. Usually Trusts allow an individual to retain control over their property while they are alive and they can incorporate planning if you become incapacitated. Trusts can be subject to challenge for a longer period than a Will.

Before adding anyone to your accounts or drafting any estate planning documents, you should contact an experienced Wills and Trusts attorney who can advise you on the advantages and the pitfalls of the various methods of transferring your property at death.