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Admitted in Arizona, Texas,

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NO, YOU DO NOT HAVE TO HAVE A TRUST TO AVOID PROBATE!

WILL INSTRUCTIONS TO HELP AVOID PROBATE

Although you do not have a trust, you still have the ability of avoiding probate on any asset as long as you have the proper plan in place. The following information outlines the method by which assets should be titled to avoid probate. Please note that many of the categories of assets described below may not be currently applicable to you; however, we feel that it is helpful to discuss them as you may obtain such assets in the future or you may simply wish to be well-informed. If you are uncertain how to initiate a transfer or if you receive CONFLICTING information, please contact this office so that we may assist you.

REMEMBER, YOU ARE RESPONSIBLE FOR KEEPING YOUR ASSETS TITLED CORRECTLY DURING YOUR LIFETIME.

A. REAL PROPERTY

To avoid your heirs from needing to file a probate court action to facilitate the transfer of your real estate we advise you to do the following.

Sole Ownership (one person): If you are the sole owner of a property, we generally do not advise that you “add” someone to title as any judgment or other lien that may be levied against the property, they will attach to your property. As such, we advise that you obtain and file a Beneficiary Deed naming the person or persons you want to inherit your real estate upon your death. This does not prevent you from selling, mortgaging or changing the beneficiary as it is only effective upon your death. By filing this, your heirs will not have to go through probate.

Two or More Owners

For two or more owners, there are several ways to own your property and depending on how you hold the property, what you do thereafter may be different.

Married: If you are married, we generally advise you to own the property as Community Property with Rights of Survivorship (CPROS). If you own your real estate this way, if one of the spouses passes, the other spouse merely files an affidavit of survivorship and probate is avoided. We generally choose this ownership as the surviving spouse receives a “Stepped Up Basis”¹ which could save them a lot of money in the future. In addition to taking title in this manner we also advise our clients to record a Beneficiary deed in case something happens to both of them.

Unmarried: If the owner’s are unmarried they generally will take title in one of two ways:

Joint Tenants with Rights of Survivorship (JTROS): This tenancy is like CPROS however, each owner owns a separate share, if one of them passes, their share goes to the surviving owners. If all owners agree, they can file a joint Beneficiary Deed agreeing to whom the property will be transferred to.

Tenants in Common (TIC): In this type of ownership each individual owns their share personally and can leave it to anyone they want. In this case we recommend all owners prepare and file a Beneficiary Deed so their heirs do not have to open a probate estate.

- Please be advised that these same ownership tenancies (CPROS/JTROS/TIC) are applicable to almost every other asset you own. As such these initial survivorship tenancies should be considered with whatever you own.

B. SECURITY INTERESTS

Most real estate security interests (e.g., sales contracts or deeds of trust) can also be titled like Real Property (CPROS/JTROS/TIC) and you can appoint beneficiaries in the same manner as Real Property by preparing such documents as an Assignment of Deed of Trust and Allonge to Note Upon Death.

C. BANK/SAVINGS ACCOUNTS/BROKERAGE ACCOUNTS / STOCKS AND BONDS

For any Bank or Brokerage Accounts, or any Stocks and Bonds that are “non-qualified”, meaning not a qualified retirement account such as a 401K, IRA, SEP, or other retirement account, we advise our clients to first own the asset with a survivorship tenancy (JTROS/JTROS). If they are joint accounts, we have them ask their bank/brokerage to put a “Payable on Death” / ”Transfer on Death” (POD/TD) provision on the account for the second to die. By adding this provision, you can name who you want to inherit the account upon both of your demise. You do the same thing if you are the sole owner of the account. By adding a POD/TOD your beneficiary merely needs to bring a certified copy of your death certificate to the bank/brokerage and the account will be transferred to their name. You should work with the service provider to properly title such assets. For private Stocks, maybe you formed a corporation for your business, you can execute a Testamentary Transfer document to name a beneficiary who the stock would be transferred to upon your death.

D. PARTNERSHIPS

Partnerships generally are either public or non-public.

1. Public

If a partnership was bought through a public offering, the institution making the sale should be contacted and ask if they will allow you to place a POD or TOD on the partnership interest.

2. Non-Public

To add such a provision to a non-public Partnership Interest (whether General or Limited) you will have to work with your other partners to see if they will agree to allow you to add a TOD/POD and, depending on your state's requirement, you may have to make a filing or have designation drafted to name a beneficiary.

E. LIMITED LIABILITY COMPANIES

In many states a member / unitholder of an LLC can prepare a Transfer of Membership Interest Testament that will name who you want your interest to go to upon your demise.

F. INSURANCES AND ANNUITIES

Life Insurances and Annuities are simply, we all know that they have a beneficiary designation, however many people do not keep up with the designation and the beneficiary actually predecease them. In these cases, the heirs of the decedent will have to file a probate court action to obtain these funds. To avoid this, we always advise our clients to not only name a primary beneficiary but to name a secondary beneficiary. By naming a secondary beneficiary there will be a safety net in place should the primary beneficiary predecease them. Another option that you can incorporate is to name multiple primary and secondary beneficiaries if you want these funds to be split.

G. IRA's/KEOGH's/401(k)'s/ETC.

The accounts are just like Insurances and Annuities, and you will want to make sure you always have a primary and secondary beneficiary appointed.

H. MOTOR VEHICLES/RV's/BOATS/MOBILE HOMES AND OTHER TITLED ASSETS

In Arizona, and in many states, people do not know that their department of motor vehicle allows you to appoint a beneficiary to receive your car if you pass. In Arizona, we strongly encourage you to fill out a Beneficiary Designation form found on ADOT's website.

I. PERSONAL PROPERTY

In most states, and definitely in Arizona, you can transfer your Personal property such as furniture, household effects, artwork, jewelry, etc., by merely executing a document instruction how you would like such property to be disbursed upon their death. Although such designation is usually

included in your will, and should avoid probate, this document will generally supersede the will, and leave no doubt who you want to give your property to.

PLEASE REMEMBER THAT IF YOU HAVE ANY QUESTIONS CONCERNING TITLE TO A PARTICULAR ASSET WHICH IS NOT ANSWERED HERE, PLEASE CALL THIS OFFICE TO DISCUSS THE ISSUE.

- The term step-up in basis refers to the readjustment of the value of an appreciated asset for tax purposes upon inheritance. Put simply, a step-up in basis adjusts the value of an asset when it passes from an owner to their heir. The higher market value of the asset at the time of inheritance is considered for tax purposes. When an asset is passed on to a beneficiary, its value is typically more than what it was when the original owner acquired it. The asset receives a step-up in basis so that the beneficiary's capital gains tax is minimized. A step-up in basis is applied to the cost basis of property transferred at death.