



## Understanding the Four Ways Property Passes at Death Helps You Plan Accordingly

Envision this alarming scenario – a widowed mother, Jan, intends for the assets of her estate to pass equally to her adult children, Tom and Megan. Jan properly executes a Last Will and Testament ("Will") naming Tom and Megan as equal beneficiaries of her estate. The entirety of Jan's assets consists of her home valued at \$200,000, a checking account valued at \$50,000 and a brokerage account, left to her by her late husband, valued at \$750,000. A few years after her husband's passing, in an effort to give Megan oversight of her brokerage account's performance, Jan made Megan a joint owner with right of survivorship on her brokerage account. What Jan did not understand was that making Megan a joint owner on her brokerage account meant that Megan would become the sole owner of the account upon Jan's death, no matter what Jan's Will stated. As a result, at Jan's passing, Megan received \$875,000 and Tom received \$125,000 despite Jan's wish to leave each child \$500,000.

This scenario illustrates why property ownership and estate planning must be simultaneously considered. The goal of the estate planning process is to ensure assets pass in an orderly manner consistent with an one's overall intentions. A Last Will and Testament ("Will") or Trust will not supersede a beneficiary designation or joint ownership with rights of survivorship. Failure to confirm, and update when necessary, titling and beneficiary designations can result in unintended results once assets are to be distributed after an individual passes away.

### Four Methods of Property Transfer at Death

To effectively coordinate an estate plan with

property ownership, one must understand the four methods of property transfer, at death, in Ohio. The four types are: (1) to the joint owner of an asset held jointly with rights of survivorship; (2) to a designated beneficiary; (3) to the beneficiaries of a Trust; and (4) to the beneficiaries of a Will.

**(1) Joint Ownership.** Bank accounts, securities accounts and real estate are among the types of assets that can be titled in joint ownership (also known as "joint tenants with rights of survivorship"). The result of joint ownership is that the assets pass automatically, by operation of law, to the surviving joint owner upon death of one of the joint



owners. It is important to note that property can be held jointly, without rights of survivorship. This is commonly known as being tenants in common. Property held in this manner will not pass to the joint owners upon the other owner's death.

**(2) Beneficiary Designation.** An individual can designate a beneficiary to become the owner of certain assets upon death. Assets that commonly transfer by way of a beneficiary designation are insurance policies, retirement plans and annuity contracts. Beneficiaries can also be added to

securities, bank accounts and investment accounts, and Ohio law permits beneficiary designations for automobiles and real estate by "transfer-on-death" ("TOD") or "payable-on-death" ("POD") beneficiary designation.

**(3) Trust.** A trust is a legal contract between the creator of the trust (i.e., the grantor or settlor) and a trustee, in which the trustee holds assets transferred to the trust for certain specified beneficiaries. If property is transferred into the trust during the life of the grantor, then the terms of the trust dictate what will happen with the assets upon the death of the grantor. Item 2 can also be utilized to name a trust as a beneficiary of one's assets.

**(4) Will.** A Will controls only those assets required to pass through a probate estate. A probate estate includes assets that are owned by a decedent individually (without beneficiary designations or in which the estate is named beneficiary) or as a tenant in common another individual.

To understand if your property ownership and asset titling are consistent with your estate plan, or to create a new estate plan that considers how you currently own your assets, please contact your attorney at Carlile Patchen & Murphy LLP or any member of the Family Wealth & Estate Planning Group.