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MEMORANDUM ABOUT OWNING ASSETS IN JOINT NAMES

I have prepared this memorandum to inform you of some of the problems that can be caused by holding your assets in joint names with others. Most people believe that there will be no problems if they can trust the joint holder. This is not the case**.**

Warning. Please be aware that in my experience most people whose names you have placed on your assets will not be able to understand this memorandum. I believe that this is the case because their perspective is so different from yours. Their interest is so drastically different from yours that they often cannot accept the reality of the issues addressed here. If they don't understand, please try to ignore their failure to understand the memorandum.

Reasons People Place Assets in Joint Names. People generally place their assets in joint names with others for one of two reasons.

The first reason is that they want someone to have access to the assets if they become incapacitated. This is an inappropriate way to solve this problem. Most people who place assets in joint names for this reason don't realize that when you place another person's name on your assets, many assets become the property of the joint holder when you die. These assets are not distributed to your beneficiaries in accordance with your will or other estate planning document. This result is contrary to what most people want. The proper solution to others having access to your assets if you become incapacitated is to give the person a durable power of attorney.

The second reason people place their assets in joint names with others is to avoid probate. While some people can avoid probate in this manner, it is usually not worth the risk. It is risky for the following reasons:

Risk to Your Assets Caused by Actions of Joint Holders. Everyone who places assets in joint names with others believes that they can trust the person. However, the greatest danger

of placing your property in joint names with others is the chance that a joint holder will substitute his or her judgment for yours.

If the asset requires the signature of all owners (such as land), they may refuse to convey the property back to you when you need it. In the case of an asset that requires only one signature (such as most bank accounts), they may actually remove it from your name. Occasionally, this is done dishonestly by someone you thought you could trust. However, it is more frequently done by people who have rationalized that they have acted in your best interest.

A joint holder removing assets from your name can cause you a problem beyond just losing the asset. Such action can result in your losing Medicaid eligibility for as long as three years. If this happens, how would your nursing home expenses be paid?

I have found that we cannot foresee who will act with integrity in a time of crisis and who will not. All of the people who lose their assets in this manner thought they could trust the joint holder who deprived them of their asset.

Risk to Your Assets Beyond the Control of the Joint Holder. Assuming your trust in the joint holder is well placed, there are circumstances beyond the joint holder's control that can cause you to lose your assets. A judgment against a joint holder resulting from an automobile accident or other misfortune can cause you to lose your assets.

There is an interesting aspect of this about homestead real property. A judgment against you does not result in the loss of your homestead in Florida. However, a judgment against a joint holder who does not live on the property can result in the loss of your homestead.

In addition to the risk to you of putting other people's names on your assets, it often is detrimental to the joint holder. Some of the reasons are as follows:

Adverse Income Tax Consequences for Joint Holder. There are adverse income tax consequences for persons whose names you place on your investments. These investments would include items like your home, other real property, stocks and bonds.

> **Income Tax When You Sell an Asset**. Ordinarily, income tax must be paid on the gain when an asset is sold. This gain is calculated by deducting what the IRS calls your "tax basis" from the selling price of the asset. Your tax basis is usually what you paid for the asset. As an example, if you purchased an asset for $50,000.00 and sold the asset for $150,000.00, Your gain would be $100,000.00. The current income tax on this gain would be $20,000.00.

Income Tax When You Give Away an Asset. If you outright give an asset away, the result would be the same upon sale of the asset. This is because the person to whom you gave the asset will have the same tax basis in the asset as you do. Consequently, in the above example, the person to whom you gave the asset would have the same $20,000.00 tax if he or she sold the assets for $150,000.00. (Incidentally, such a gift requires that you file a gift tax return at the time of the gift because the gift is more than $10,000.00).

No Income Tax If Asset Is Inherited. However, if the beneficiary inherits the same asset through your estate, he or she receives a stepped-up tax basis. This stepped-up tax basis is equal to the fair market value of the asset at the date of your death. This means that if your beneficiary sells the asset for the date of death value, there is no income tax on the sale because there is no gain. In the above example, the $20,000.00 of income taxes on the gain would be saved because there would be no gain.

Income Tax If You Put the Asset in Joint Names. If you put the asset in joint names with one beneficiary, the IRS views this act as having made a gift of one-half of the asset to the beneficiary. Consequently, in the example above, you would be required to file a gift tax return at the time of the gift because one-half of the value of the asset is worth more than $10,000.00. Upon your death, the beneficiary will not receive the stepped-up tax basis on the one-half of the asset considered a gift during your lifetime. Consequently, the beneficiary keeps your tax basis on that one-half of the asset and would have to pay income tax on the gain for that one-half. Therefore, using the figures in the example, the income tax would be $10,000.00.

In accordance with the Florida Statutes, the reasonable fee for probating the same asset is $3,000.00. Consequently, the beneficiary has a net loss of $7,000.00 caused by your placing the beneficiary's name on the asset.

Medicaid Problems for Joint Holder. If joint holder becomes incapacitated and otherwise qualifies to have the State of Florida pay their nursing home expenses, that eligibility will be denied because of their name being on your asset. In this case, the state considers one-half of the asset as belonging to the incapacitated person. If you transfer the asset out of the joint holder's name to solve the problem, the joint holder still will not be eligible for Medicaid for as long as three years after the transfer. It doesn't matter that the asset was yours. The incapacitated person's name appearing on the asset is the determining factor.

Legal Advice. My legal advice is that you not put property in joint names with persons other than your spouse. Probate is a comparatively inexpensive process in Florida. The avoidance of probate is not worth the risk of losing your assets or the adverse results to your heirs.