



## **MARC J. SOSS, ESQUIRE**

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Sarasota – Lakewood Ranch - Bradenton

### **PAY-ON-DEATH ACCOUNT v. WILL v. REVOCABLE TRUST**

Many clients inquire as to what process to utilize to pass on their estate assets, at death, to their intended beneficiaries. There is no “one size fits all” when it comes to answer as each method has its positives and negatives.

A Pay-On-Death account (“POD”) is an account established with your financial institution (bank, brokerage, etc..) to have the account assets, at your death, distributed to a designated beneficiary. This is in effect a contract between you and the financial institution. Upon your death, the named beneficiary will be required to produce a certified copy of your death certificate and proof of identification to collect the account funds. The main benefit of a POD is that the account assets will pass directly to the beneficiary(s) named on the account without probate or being subject to the decedent’s creditor claims. This is simple way to transfer assets at death to an individual not involved in any dispute or litigation (divorce, bankruptcy, judgment creditor, etc.).

In contrast, if the designated beneficiary is involved in a dispute or litigation the assets passing outright to them could be at risk to the dispute or litigants claims. If the designated account beneficiary is a “special needs” individual, direct receipt of the account funds could result in them losing eligibility for the government benefits they are receiving. In addition, there is no method for the account owner to place any limitations or restrictions on the assets being distributed to the designated beneficiary.

A Last Will and Testament (“Will”) is a legal document that outlines the distribution of your estate assets to your beneficiaries upon death. The estate assets will first be required to pass through the Florida probate process before they can be distributed to the beneficiaries. Similarly, a Revocable Trust (“Trust”) does the same, except it does not require the estate assets to be handled through the Florida probate process but administered by the trustee of the Trust.

The positives of utilizing a Will or Trust is that there is some form of oversight as to the distributions of the estate assets to the beneficiaries. This oversight comes in the form of the Florida probate court or the Florida Circuit Court, as necessary. A Will and Trust will also allow the decedent to place limitations and restrictions on the assets being distributed to the beneficiary. This can be utilized to restrict when and under what conditions (age, completion of school, graduate degree, protection from a creditor claim, etc..) assets will be distributed to a beneficiary and protect assets which would have otherwise passed to a disabled beneficiary.

In contrast, a Will and Trust require the involvement of a third party to administer and distribute the estate assets to the beneficiaries. These processes can both involve additional fees and costs which will not be incurred when using a POD account.

It is important to discuss and review your options with an experienced Florida estate planning lawyer prior to deciding which option will best accomplish your goals and objectives.