

"JOINT," "IN TRUST FOR" AND "PAY ON DEATH" OWNERSHIP

by **STEVEN D. BERES**
Board Certified Wills, Trusts & Estates Lawyer

One simple way to avoid probate is to hold assets in a form other than in your individual name. For instance, you might establish an account in your name with others as "joint tenants with right of survivorship" (JTWROS), or in your name "in trust for" (ITF) another person as beneficiary. Both types of accounts allow property to pass at your death without probate. In selecting either type of account, however, it is important to note that a joint tenant on a JTWROS account is authorized to withdraw funds from the account without your signature during your lifetime, whereas a beneficiary has no access to funds an ITF account until your death. Due to the limitation on beneficiary access, the ITF account is a popular probate avoidance device.

Prior to 1995, use of the ITF form of ownership was limited to bank accounts and no similar form of ownership was available for securities or brokerage accounts. However, a Florida statute which became effective in 1995 now authorizes "pay on death" or "transfer on death" (POD) ownership of bank accounts, brokerage accounts and individual securities. Like ITF ownership, POD ownership allows property to pass without probate and gives the beneficiary no right in the property until the death of the owner.

It should be noted that brokers and transfer agents are **authorized but not required** to offer or accept requests for POD ownership. Further, POD ownership of bank accounts may be subject to additional regulations imposed by the institution. For these reasons, if interested you should speak with your bank or broker concerning whether POD ownership is offered, and whether any special restrictions apply. The following examples illustrate the use of POD ownership:

Account title

Distribution of account

EXAMPLE 1: Mary POD John

Upon Mary's death, ownership of the account passes to John without probate. Prior to Mary's death, John has no right in the account

EXAMPLE 2: Mary and James JTWROS
POD John

While both Mary and James are living, either may make withdrawals from the account, individually. Upon the death of either Mary or James, the survivor becomes sole owner of the account. Upon the death of both Mary and James, the account passes to John without probate; prior to that time, John has no right in the account

EXAMPLE 3: Mary POD John, Sally and Sue

Upon Mary's death, ownership of the account passes to John, Sally and Sue, equally, without probate. Prior to Mary's death, only Mary may access the funds in the account. If John predeceases Mary the account would be shared by Sally and Sue, equally

In all three examples the POD designation may be cancelled by Mary (and in Example 2 by James also) at any time. In all three examples if none of the named beneficiaries (*i.e.*, John, Sally and Sue) is living when the account is to be distributed, the account would pass to Mary's estate (or to James' estate in Example 2 if he had survived Mary).

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