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A LIMITED LIABILITY LAW COMPANY

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MEMO TO: CLIENTS

FROM: IVEY FOSBINDER FOSBINDER LLLC

RE: CHANGING TITLE TO REAL PROPERTY

Our office is often asked to take someone's name "off" the deed to real property, to add someone else's name, or to "gift" a property to a child. While the title to the real property can often be changed, the following general rules should be understood:

Irrevocable: Once a person is put on title to real property, that property cannot be taken back or given to another person by the original donor. Example: Mother adds son to the deed so that title is held by mother and son as joint owners, with right of survivorship. Two years later she has a disagreement with son and wants the title returned to her sole name. If son refuses to sign, she cannot change the portion of the property given to him. Mother can only change title to the portion of the property that she kept.

It is important to carefully consider:

- 1) your reasons for the transfer; If there is a possibility that you will change your mind, then a deed is not a good way to go. Instead, consider a will or trust, where you reserve the right to change your mind before you die.
- 2) the possibility of legal problems in the lives of the children (divorce, bankruptcy, car accident). Remember that bad things happen to good and honest people.

- 3) The transfer is permanent and cannot be revoked unless the recipient of the gift chooses to give it back to you voluntarily.

Taxable Gift: Changing title to real property is almost always a taxable gift. Taxable gifts are required to be reported to the Internal Revenue Service on or before April 15 for the preceding calendar year.

In some cases, no tax is due because of the individual's tax free credit. However, a gift tax return must still be filed and the amount of the gift is deducted from the total amount you can pass on tax-free at death.

Cost Basis: Further, there may be tax advantages to receiving a property at death. If property is received as a lifetime gift, the recipient takes the donor's cost basis. If property is transferred at death, the recipient gets a new cost basis equal to market value on the date of death.

Medicaid: Gifting real property may disqualify you from Medicaid for 5 years, so be sure to consider your health and care needs before changing the title.

Summary: Discuss your reasons for making the transfer with the attorney and your advisors. Be sure that the transfer is an appropriate way to meet your objectives.

If you decide to make the transfer, be sure to tell your attorney and your tax preparer so that the gift tax return can be filed.