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The Pitfalls of Joint Ownership

(Part 1 of 3)

Joint property, also known as joint tenancy, is nothing but a planning pitfall. Although joint tenancy has been assailed for years by many estate planning experts, it remains—unfortunately—a very popular form of property ownership. Joint tenancy is a pitfall because you cannot control where such property passes after your death.

In joint tenancy, each person owns the entire asset, not a part of the asset. This legal fiction of two or more people owning 100 percent of the same asset is derived from the full name given to joint tenancy: joint tenancy with right of survivorship. “Right of survivorship” means that whoever dies last owns the property. The previous joint tenants merely had the use of the property while they were alive.

Joint tenancy property is “uncontrollable.” Even if a joint tenant intends to have his or her share pass to loved ones, the property is not controlled by the instruction in the joint tenant’s will or trust. Joint tenancy automatically passes to its surviving owners by operation of law.

Property that is owned in Joint tenancy can be a trap, because the term itself has nice connotations. It implies “the two of us,” a partnership, a marriage of title as well as love. On the surface, at least, it appears to be the right way for people who care for each other to own property. It’s psychologically pleasing, which for many people is the real advantage of owning their property jointly.

As in many other latent problems, joint tenancy is easy and convenient. Odds are that when you were married (if you are), one of the first financial actions you and your spouse took was to open a checking or savings account. The clerk who helped set up your account put it in your joint names when you answered yes to, “Both names on the account?” The same is true of your first house or your first car. It seems that all of those involved (primarily clerks and salespeople), whether or not they knew what they were doing, took control of your planning and titled your property in joint tenancy.

For most people, the disadvantages of joint tenancy far exceed any advantages. Some of the more devastating pitfalls of joint tenancy are:

1. There is no control, and property may pass to unintended heirs.
2. There are no planning opportunities.
3. For married couples, probate is at best delayed, not totally avoided.
4. For non-spousal owners, unintentional gift taxes and death taxes can be generated.

In Part 2 of this article, we’ll explore each of these problems in more detail. Our goal is that you, as a professional advisor, will have clear and compelling answers for your clients as to why they should avoid titling assets in joint tenancy. We also will suggest other ways they might own their property that will enable them to maintain the control they desire.



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