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The Pitfalls of Joint Ownership

(Part 2 of 3)

In Part 1 of this article we introduced the mechanics and the dangers of owning assets as Joint Tenants with Right of Survivorship. In this installment, we'll begin to take a look at each of the potential pitfalls in more detail.

(1) There is no control, and property may pass to unintended heirs.

Joint tenancy property passes to the surviving joint tenant and no one else, no matter what you do. If it is your intent to leave your property to your spouse and then to your children, joint tenancy is not for you.

Joint tenancy provides no means of ensuring that your property will pass to whom you want. For example, if your spouse remarries, your children may inadvertently be disinherited. Or, against your wishes, your spouse may choose to disinherit some or all of your children after your death. If you and your spouse die together in an accident, significant questions may arise as to who is going to inherit your property.

While joint tenants are living, they can sell their interest in the joint property and they can give their interest away. In this respect, joint tenancy is similar to other forms of ownership. It is only on the death of a joint tenant that its unique features come into play. In some states, joint tenancy between a husband and wife is called tenancy by the entirety. It works exactly like joint tenancy with right of survivorship, except that it is more restrictive. While both spouses are alive, the approval of both is necessary before the property can be transferred.

A joint tenant has the authority to take all the money from a bank account and has significant control over other types of property. This "control" can be dangerous, especially since a deceased tenant would have had no opportunity to leave any instructions restricting the use of the joint tenancy property.

Even though property is titled in joint tenancy, the joint tenant who dies is presumed to own 100 percent of the property. As a result, the deceased tenant's family not only loses the property (which passes to

the surviving joint tenant) but also must pay all of the death taxes. Joint tenancy between non-spouses can create the worst possible tax scenario: full taxation on property one doesn't even own.

(2) There are no planning opportunities.

What if your spouse or your children need assistance in managing the property you left them? Joint tenancy cannot help. What if you want to leave instructions for your loved ones as to how, when, and why your property is to be used? Joint tenancy offers no opportunity for instructions of any kind.

If you become disabled, your joint tenancy property may be tied up in a living probate while you desperately need it for your own or your loved ones' care. If your spouse is disabled when you die, the probate court will "inherit" the joint tenancy property and determine how and when it is to be used for your spouse's benefit. More pitfalls and possible solutions next time in the final installment of this article.



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