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TITLE = RESULT

The Importance of Proper Ownership

(Part 1 of 2)

How you own your property helps determine its distribution when you die, or its use if you become disabled. It is important to double-check that your client owns the property they think they do. Planning with property they don't actually own (and this does happen) is no planning at all.

The three primary forms of property ownership include fee simple, tenancy in common, and joint tenancy with right of survivorship. Each form of ownership has its own inherent features.

Fee simple is simple. You and only you own the property. Property in fee simple means you own all of it. You can

- (1) give it away,
- (2) sell it, or
- (3) leave it on death.

Is there any pitfall with fee simple property? Yes. Property owned in your own name is subject to both a living probate in the case of disability, and a death probate upon death. In short, what may appear to be *maximum* control, may actually result in a total *loss* of control.

Tenancy in common means that you and others own part of an asset. Each "tenant" has less control of the whole property than would one person who owned it in fee simple. With tenancy in common you can

- (1) give your part of it away,
- (2) sell your part, or
- (3) leave your part on death.

Tenancy in common requires that you own the property with one or more other people. Each tenant owns a percentage of the whole asset. For example, if there are two tenants, each owns 50 percent of the asset. If there are three, each owns 33 1/3 percent. The number of possible tenants in tenancy in common has no limit.

For example, if you and a friend own a horse as

tenants in common, you each own 50 percent of that horse. But who owns which half? It really doesn't matter while both of you are alive, healthy, and getting along. You accommodate each other: each paying half of the expenses and receiving half of any income from trail rides. You have an agreement about when each of you gets to use the horse. If you should quarrel, however, problems can arise. You can't demand your half of the horse. Very likely, you and your ex-friend will have to sell the horse – if you can both agree on the price and manner of sale.

In case you and your friend cannot reach any agreement, you can go to court and have the judge sell the horse. This method is expensive, and odds are you won't get the best price for the horse. But when tenants in common can't agree, courts are virtually the only recourse available.

Next time we'll continue our discussion on tenancy in common ownership, and introduce the planning pitfalls of joint tenancy with right of survivorship.



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If you are interested in providing your clients with a copy of Ketra's book 'Your Life, Your Legacy' please call the office for complimentary copies.

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