

The Joint Tenancy: A Useful Estate Planning Tool

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A joint tenancy is a form of ownership in which two or more persons share ownership of personal or real property. It differs from other forms of ownership in that it allows the surviving joint tenant(s) to immediately become the owner(s) of the whole property upon the death of the first joint tenant. Effectively, when the first owner dies, his or her interest passes on to the surviving tenant(s), without the need for the property to go through probate. Although a joint tenancy will allow the property to pass outside of the probate process, it does not prevent the value of this property to be potentially taxable as to federal and state estate taxes.

A joint tenancy is often confused with another form of co-ownership, the tenancy in common. A tenancy in common is also the ownership of an asset by two or more individuals together, but without the rights of survivorship. Upon the death of the first co-owner, his or her interest will not pass onto the surviving owner(s), but will pass according to his or her will, or if there is no will, according to the intestacy laws of the respective state.

The creation of a joint tenancy is controlled by state law, for both real and personal property. If a joint tenancy involves parties other than husband and wife, the deed or conveyance must specifically state an intention to create a joint tenancy by expressly noting that the property will be held not as tenants in common but as joint tenants with rights of survivorship. Typically, for transfers of personal property, such as stock certificates, the simple letters "JTWRs" may be used to designate a joint tenancy. Once a joint tenancy is created, the signatures of all joint tenants are typically required to transfer or sell any type of joint tenancy property, real or personal. Also, be advised that creating a joint tenancy with someone other than your spouse may result in a gift tax liability.

Although a joint tenancy is a useful estate planning tool, it should not be viewed as a substitute for a will. A joint tenancy only applies to that particular piece of property. A properly written and executed will applies to all property owned for which he or she has not otherwise provided. While a joint tenancy does provide for the disposition of the property upon the death of one of the joint tenants, there is nothing in a joint tenancy which provides for the disposition of the property upon the death of the survivor tenant. If joint tenants die simultaneously, probate proceedings will be needed to transfer title to the property. In some cases, separate probate proceedings for each tenant may be necessary.

Along with the obvious benefits of a joint tenancy, there are several potential disadvantages that a person needs to be aware of, some of which we will address. One such potential disadvantage is that if an original owner places a piece of property in a joint tenancy, he is no longer the sole owner. If the original owner subsequently decides to sell that property, he typically needs the other joint tenant's signature to transfer ownership to another party. Furthermore, a jointly owned asset will be subject to any judgments against any of the owners and may be lost in the bankruptcy of any owner. Finally, even if that particular piece of property was owned prior to a marriage, if it was later converted to a joint tenancy, the original owner may lose part of that asset in a subsequent divorce proceeding.

Your legal assistance attorney can help you determine what property should be held as joint tenants and answer all of your estate planning questions. For more information or assistance, please contact the Ft. Leavenworth Legal Assistance Office at (913) 684-4944.