



Problems with Joint Tenancy

When you open a bank account or take title to real estate, joint tenancy is often viewed as a simple and inexpensive solution to avoid probate. Unfortunately, as explored below, the simple solution is not always as simple and straightforward as it may seem, resulting in unforeseen and undesirable consequences.

What is Joint Tenancy?

Joint tenancy (also known as joint tenancy with rights of survivorship or “JTWROS”) is a form of co-ownership of property during the lives of two or more tenants. Upon the death of a tenant, the remaining tenant or tenants immediately succeed to the ownership of the property, regardless of the wishes of the deceased tenant as expressed in his or her Last Will. If there is only one surviving tenant, he or she becomes the sole owner without the necessity of a probate proceeding. At the surviving tenant’s death, however, if no additional joint tenants are subsequently added to the property, the property will pass to the surviving tenant’s beneficiaries under his or her Last Will through probate.

What is Tenancy-in-Common?

Tenancy-in-common is a second form of co-ownership of property. Unlike joint tenancy, upon the death of one tenant, his interest in the property passes to his beneficiaries under a Last Will, which requires probate. The surviving tenant does not receive the deceased tenant’s interest, unless so provided in the deceased tenant’s Last Will.

What is Tenancy-by-the-Entireties?

Only a few states, including Florida, recognize property ownership known as tenancy-by-the-entireties. A tenancy by the entireties is a type of co-ownership available only to married couples. Like JTWROS, the tenancy by the entireties encompasses a right of survivorship, so that when one spouse dies, the entire interest in the property passes to the surviving spouse, without requiring probate.

Of course, at the surviving spouse’s death, the property will be subject to probate in order to pass to his or her beneficiaries, unless a joint tenancy is created with another individual.



What are the risks of Joint Tenancy?

Simply adding a person as a joint tenant is a gift that could require the payment of a gift tax. If an asset's value is minimal, this is not likely to cause much concern. If the asset's value is substantial, then the addition of a new person on the property may require an unintended tax consequence.

More importantly, though, property held in joint tenancy is subjected to creditor claims of either tenant. For example, a parent wishes to add her daughter to the title of her bank account as joint tenants with right of survivorship. Unfortunately, her daughter subsequently causes an automobile accident. The injured party is able to collect against the daughter's interest in the bank account, even though the funds were originally her mother's funds.

In addition, by adding the person as joint tenant to financial accounts, there is danger that he or she will make unauthorized withdrawals from the account. Finally, title to joint tenancy property will vest with the joint tenant upon death, which may be contrary to how the deceased tenant wishes his or her estate to be divided. In effect, the joint tenancy may frustrate the deceased tenant's estate plan.

Rather than face these and other unintended consequences, it is often advisable to avoid joint tenancy and instead form a revocable trust to take title to one's assets. A revocable trust is simply a contractual agreement among parties wherein a trustee (who can be the trust-maker) is responsible for managing assets during lifetime, and thereafter a successor trustee is charged with honoring the trust-maker's wishes. This is quite similar to the job of an executor under the Last Will, although a trustee is not under the direct supervision of a probate court, meaning that the administration of a trust can be accomplished in an expeditious fashion and at a reduced cost.



Joshua T. Keleske, P.L. serves families in the Tampa Bay area with their estate planning, estate and trust administration, and business planning needs. If you have questions regarding how we can be of assistance to you and your family, please contact us at anytime at 813-254-0044. We are happy to answer your questions and arrange for an appointment to speak with you.

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