

JOINT TENANCY

Joint Tenancy (**often properly seen as “Joint Tenants, with full rights of survivorship”, hereafter in this article simply referred to as “Joint Tenancy”**) is a legal mechanism which provides a way of owning property -- whether real estate or personal property -- in the name of two or more people. When one person dies, the survivors become the sole owners.

Clients often ask how can joint tenancy be helpful? There are three ways:

1. Probate court proceedings are avoided because the property, whether real or personal, automatically passes to the survivors.
2. Personal representative fees and court costs may be avoided and legal costs are generally reduced.
3. Generally, the people an owner owes money to cannot claim payment out of the jointly held property. However, jointly held bank accounts may be the exception to this (see #1 below).

Like many legal options there are some ways joint tenancy also may cause trouble. So be aware that under some circumstances, the following scenarios could cause a problem:

1. If one of the owners has a debt, a creditor of that owner may force a sale or liquidation of the whole property.
2. Any co-owner can change the nature of his interest into a "tenancy-in-common" and avoid the survivorship feature. Tenants-in-common also own an undivided interest in property, but without a right of survivorship. Under tenancy-in-common, one owner may sell or give their interest at any time during life or at death.
3. All parties must join to make transfer or conveyance of the entire property. Joint bank accounts and co-owner U.S. Government Savings Bonds are not strictly joint tenancies and are subject to the special rules under which they are created.
4. Unless the bank system rules/regulations states otherwise, one joint tenant can withdraw the entire account.
5. Placing property in joint tenancy or making major improvements to property already in joint tenancy may cause gift tax liability unless the joint tenants are married to each other.
6. Placing property in joint tenancy may disinherit children or others since property held in joint tenancy passes to the survivor regardless of what the deceased joint tenant's will directs and regardless of who the decedent's heirs are under Florida law.

Dreaded Tax Issues:

Does joint tenancy avoid estate taxes? Yes, if the joint tenants are married to each other. However, for most transfers between spouses, no federal estate tax is levied. No, if the joint tenants are not married to each other. In some cases, joint tenancy reduces taxes; in others, it increases taxes. The Federal Estate Tax rules are complicated. There is no Florida Estate Tax.

Generally, however, the estate of a man who conveys real estate or stocks to his wife at death will pay no federal estate taxes regardless of whether the conveyance is under joint tenancy, by will or under the laws of intestacy. If the joint tenants are not married to each other, the property must be included in the estate of the first to die for federal estate tax purposes where the survivor can prove he contributed to the value of the joint property.

In larger estates, joint tenancy between spouses can be expensive because more taxes may be due in the survivor's estate than would have been due had there been no joint tenancy. Overall savings in taxes in larger estates may be obtained by use of trusts or other devices to pass property in such a way that it will not be taxed in the survivor's estate.

Income Tax and Gift Tax During Life must likewise be considered.

I have situations where clients are concerned about income tax consequences. Does joint tenancy cause income tax problems? It may if the joint tenants are not married to each other. The government will ordinarily expect each joint tenant to show his share of any revenue in his income tax return and to prorate taxes and other deductions.

Many clients are not aware of Federal Gift Tax issues, and just make changes to ownership via joint tenancy. Does placing property in joint tenancy cause gift tax? It may, depending on whom the joint tenants are. Even when there is no gift tax, there may be a duty to file federal gift tax returns. Generally, placing property in joint tenancy amounts to a gift of a part interest in the property.

In many situations people wonder if you need a will if everything you own is in joint tenancy? Perhaps not. But remember that many times there will be some property not in joint tenancy. If you and your co-owner die at the same time, half the property passes according to the will of each joint tenant. If there is no will, Florida law determines who gets the property. A will can save expense and trouble even if it leaves property to people who would get it without a will.

Let me share a situation I ran across years ago. Consider this scenario. Mary was killed instantly in an auto accident. Her partner was badly injured and died the next day. Neither had a will, so all of their joint tenancy property went to the partner's mother. Perhaps Mary would have wanted her partner's mother to take everything, but perhaps not. And if Mary had survived, by even a short time, all the property would have gone to her side of the family. A will would have made her wishes clear.

I strongly suggest that you consult qualified legal advice before you make changes to the title of property, and likewise suggest that you seek counsel now, if you have already done so, without considering all of the items discussed in this brief article.