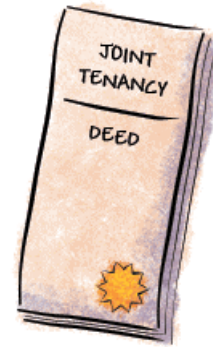


Joint Tenancy

Could joint tenancy, one of the most common forms of holding title to assets, lead to an estate planning disaster for your heirs? Joint tenancy is a form of holding equal interests in an asset by two or more persons. If one joint tenant dies, his or her share generally passes automatically to the other joint tenant by right of survivorship.



Advantages of Joint Tenancy

- **Probate avoidance:** Title to assets held in joint tenancy passes automatically at the death of one joint tenant to the others. There is no need for a formal probate (unless all the joint tenants die).
- **Convenience:** Bank accounts held in joint tenancy can be withdrawn by any joint tenant. This may be an advantage if one party becomes incompetent due to an accident, a stroke, advanced age, etc.

Potential Disadvantages of Joint Tenancy

- **Loss of control:** Your will (or trust) will have no effect on joint tenancy assets, even if you change your mind as to the persons you would like to receive your share when you die. Also, the entire asset may be available to the creditors of either joint tenant.
- **Assets may not reach your children:** Quite often assets passing to a surviving joint tenant spouse end up in joint tenancy with a new spouse. The new spouse may ultimately receive all of the assets rather than your children. Also, if the first joint tenant to die had children of a prior marriage they can be easily cut out of any inheritance by the surviving joint tenant.
- **Potential tax penalties**
 - **Gift tax penalty:** The creation of a joint tenancy in some assets may be subject to gift taxation if the value exceeds the \$12,000 annual gift tax exclusion.¹ Gifts to one's spouse are generally not taxable.
 - **Estate tax penalty:** The AB credit shelter trust is often used to reduce estate taxes when a married couple dies. Holding assets in joint tenancy can completely upset this type of trust, by passing assets outside the trust.
 - **Income tax penalty:** When appreciated assets are sold, an income tax is generally paid on the difference between the cost basis and the appreciated sales price. Assets included in one's estate receive a new, stepped-up cost basis at the time of death, namely the value at which the assets are included in the decedent's estate.² If these assets are then sold at this higher value, there is no gain, and thus no income tax due. However, assets held in joint tenancy title receive only a partial step-up in basis, on the decedent's share. IRC Sec. 1014(b)(9). If the decedent owns the asset alone or as community property, the basis of the entire asset will be stepped-up. See IRC Secs. 1014(a) and 1014(b)(6).

Note: State income tax laws should also be examined before changing the form of ownership.

¹ The annual gift tax exclusion (\$12,000 in 2006) is indexed for inflation in increments of \$1,000.

² This applies to persons dying in years other than 2010. For deaths during 2010, there will be a limit on the step up in basis.

Continued...

Joint Tenancy

Dissolving an Unwanted Joint Tenancy

After careful examination, if it is decided to dissolve a joint tenancy in real property, it is generally done by creating a new deed by which the joint tenants transfer their interests to themselves as tenants in common or community property.

It may also be possible to change title by a separate written agreement between the parties. Since the transfer of real estate is governed by the law of the state in which it is situated, local legal counsel should be sought prior to any change of title.

Note: The changing of title to assets can have very serious tax consequences and should be undertaken only after competent professional advice.