

## **THE HIDDEN PROBLEMS OF JOINTLY-HELD PROPERTY**

Many of our estate planning clients often say: "I have a very simple estate. Why shouldn't I just make everything joint with my child (or children) now, thus avoiding probate and possibly reducing taxes?" In certain situations, the creation of joint ownership may be a good planning device. However, as you will see from the following examples, jointly-held property is not always such a good idea. Please consider these potential problems carefully. We will be happy to help you decide on a **customized** estate plan which may or may not involve the use of joint tenancies.

### **Problems with Joint Ownership (during life):**

1. Some assets (such as bank accounts) can be completely controlled by either owner acting alone. In other words, your child could withdraw all the money from a bank account you've put his name on, without your knowledge or your agreement.
2. Some property (such as real estate) requires the consent of all owners to sell, transfer, refinance, etc. This means that your child may have "veto" power over you selling or re-financing your own home.
3. Both joint owners can be liable for accidents because owners are responsible for their property.
4. The creditors of one joint owner may seize all or part of the assets.
5. If a joint owner gets a divorce, the value of the joint asset may affect the property settlement and the asset itself could be part of the settlement.
6. If a joint owner goes through bankruptcy, the asset could be part of the bankruptcy estate.

### **Problems with Joint Ownership (after death):**

1. If younger family members die before older family members:
  - a. Grandchildren can be unintentionally disinherited;
  - b. The asset may still be subject to probate.
2. Assets can change value and result in unequal or unexpected differences among children.
3. If all the assets are left to one child with an "understanding" on how the property will be divided among children, etc., the understanding may not be

carried out at the time of death. The other beneficiaries will not have any legal rights to an asset that was jointly owned.

4. Other goals may not be achieved:
  - a. Funds set aside for educational purposes;
  - b. Managing money until children are more “mature”;
  - c. Professional or other centralized management.

#### **Tax Consequences of Joint Ownership:**

1. One-half ( $\frac{1}{2}$ ) of the asset may be treated as a gift when joint tenancy is created and may require you to file a gift tax return with the IRS. A gift tax return or liability does not keep the asset out of the estate for federal estate tax purposes.
2. The “basis” for an asset that is transferred by joint ownership is usually lower than the date of death value used for assets that are inherited. This could result in a very significant capital gains tax when the beneficiaries sell the assets.
3. If all the assets are left to one child with an “understanding” on how the property will be divided among children, that child could also have gift tax liability when he distributes the asset to his siblings.
4. Federal estate tax presumes that the true owner is the first to die; therefore the asset is taxed to the estate of the first to die. This can be a serious problem in an unexpected death order.

As you can see from the above examples, it is not as easy as you may think and every estate plan is unique. While joint property can be one useful tool, it should not be the only one. We look forward to reviewing your individual plan in detail and recommending a **customized** plan for you.

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