

Jointly OWNED PROPERTY

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I own real estate jointly with someone else, but I am not sure that it is set up correctly. How should the property be titled?

There is more than one way to hold property jointly, called joint tenancy, with one or more other persons or entities. Let's explore some of the advantages and pitfalls of joint ownership.

JOINT TENANTS WITH RIGHT OF SURVIVORSHIP

Joint tenancy with right of survivorship means that the last surviving owner (or tenant) will own the property automatically on the death of other owners. For example, James, Megan and Donald own land jointly with right of survivorship. James dies. Megan and Donald then each own half of the property. Megan dies. Donald owns it alone. This form of ownership will avoid probate on the deaths of James and Megan, but on Donald's death, the property will be subject to probate to pass it to Donald's heirs. James and Megan's heirs are not entitled to a share of the property.

TENANTS IN COMMON

Those who own property as joint tenants in common are treated as each owning a percentage of the undivided whole property. In other words, in the case of James, Megan and Donald, they each own an undivided 1/3 interest in the whole parcel. Each 1/3 can be partitioned off. This means that, if James dies, his undivided 1/3 interest does not pass to Megan and Donald. James' 1/3 interest passes to his heirs. And how does it get to them? Through probate, of course. The same would be true of Megan's and Donald's 1/3 interests.

TENANTS BY THE ENTIRETIES

This form of joint tenancy is reserved exclusively for married couples. It is almost the same as joint tenants with right of survivorship except that only a husband and wife are entitled to use this form of ownership. If James and Megan are married, their property is considered to be held in this form

unless the deed specifies otherwise. This means that if James dies, Megan automatically takes ownership of the property. Upon Megan's death, however, probate will be required to pass the assets to her heirs.

PITFALLS OF JOINT TENANCY

The proper form of joint ownership can be beneficial, but there are various factors to consider before opting for joint tenancy. Let's look at a few disadvantages to joint ownership.

While joint tenancy with the right of survivorship avoids probate on all but the last joint owner's death, it exposes the asset to the creditors of all owners. If one owner is sued, the entire property is exposed to that liability. Example: a single parent adds a child to his home deed. The child is in an automobile accident and is sued. The parent's home could be subjected to the child's judgment.

If a married couple owns a home as tenants by the entireties, they are entitled to constitutional creditor protection. If they add someone else to the deed, the property is no longer considered homestead, and they lose the creditor protection.

Where there are a number of joint owners, if one owner wants to sell it, all of the owners may need to join in the sale of the property.

In a large estate, a transfer of property to a joint tenant, such as adding your child to your deed, could be considered to be a gift subject to gift tax, thereby reducing your estate tax exclusion.

With a tenancy in common, if one owner dies, that interest passes to the deceased owner's heirs (via probate). The other tenants will then own the property with someone they did not initially anticipate sharing ownership.

As you can see, joint ownership has its advantages and disadvantages. To determine the best way to own your property, you should consider the ramifications of probate, creditor claims and gift taxes, and maintaining control before titling the property. ■

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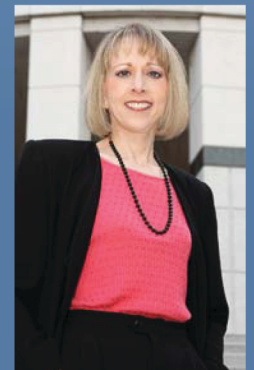


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