



JOINT TENANCY: THE PROS & CONS

Q: What is joint tenancy?

A: It is a particular type of property ownership by which two or more persons may own real estate or personal property together. It differs from other types of co-ownership in several respects, the most commonly known is that upon the death of one joint tenant, his or her interest automatically passes to the surviving joint tenant, who becomes sole owner.

Q: Why do some people favor joint tenancies?

A: Because of the “survivorship” feature. If one co-owner dies, his or her interest terminates in favor of the survivor rather than passing according to the will of the deceased owner or under the laws of inheritance.

Q: Is a joint tenancy a substitute for a will?

A: No. A properly drawn will disposes of all of a person’s property according to the person’s plan at death. A joint tenancy only affects the particular property described in the instrument creating it. Therefore, a will is needed to dispose of any property not held in joint tenancy.

Q: When title to real property is conveyed to persons as joint tenants, must both join in conveying good title to the whole property to a purchaser?

A: Yes.

Q: Can either convey his or her interest to the other?

A: Yes.

Q: Can either alone convey his or her interest to a third party?

A: Yes, but the purchaser will receive title to only

an undivided one-half interest. The other one-half interest remains with the joint tenant who did not convey. If the property is the homestead of the couple, other restrictions apply. Making such a conveyance destroys the joint tenancy and title is held as tenants in common.

Q: When a bank or thrift institution account is opened in the names of people jointly, can either of them write a check against the account with or without the knowledge of the other?

A: Yes. Also Federal Government Bonds may be cashed by either one alone. However, there are some thrift institutions which require both signatures.

Q: When corporation stock and bonds are issued in the joint tenancy name of a husband and wife, can either of them sell or give them away without the other joining in transfer of title?

A: No.

Q: Does a joint tenancy between husband and wife disinherit the children?

A: Yes, because the entire property in joint tenancy passes to the survivor free from any obligation to the children. An experience that has happened with unfortunate frequency is for the surviving widow to remarry and place the property in joint tenancy with the second husband with the result that upon her death, the stepfather gets it all to the exclusion of the children.

Q: Is an Oklahoma or Federal Gift Tax due when a joint tenancy is created?

A: As to Oklahoma Gift Tax, Oklahoma repealed its Gift Tax effective January 1, 1982. Therefore, no Oklahoma



Gift Tax would be due when a joint tenancy is created.

Under Federal Gift Tax Law, spouses have an unlimited marital deduction for lifetime gifts between spouses, so there would be no Gift Tax upon the creation of a joint tenancy with one's spouse. Nor would there be any Federal Estate Tax on the joint property at the death of the first spouse. The deceased spouse's half passes under the Estate Tax unlimited marital deduction. Oklahoma's Estate tax has been repealed, effective January 1, 2010.

When property is placed in joint ownership with someone other than the spouse, a Federal Gift Tax may be due. If one person provides the entire purchase price and title is taken jointly with a person other than the spouse, a gift of half the property is made. Two exceptions to this rule are joint bank accounts and U.S. Savings Bonds. There is no gift until and unless the funds are withdrawn from the joint account or Savings Bond by the persons who did not provide the money deposited. For many gifts, the first \$13,000 in value per year per donee is excluded from Gift Tax and other exclusions and credits may apply.

Q: If a person buys property and takes title in joint tenancy, is the property taxed in his or her estate at the time of death?

A: If the joint owners are husband and wife, there is no Federal or Oklahoma Estate Tax due with respect to the joint property at the first spouse's death. The unlimited marital deduction applies. At the death of the second spouse, the property will likely be subject to Federal Estate Tax, unless it is bequeathed to a new spouse or to a charity, or unless the second spouse's estate is too small to require payment of Federal Estate Tax.

For non-spousal joint owners, if one of them provides the entire purchase price and that owner dies first, then the full value of the property is

included in the estate for tax purposes. If a joint owner who provides none of the purchase price dies first, then the property is not included in the estate. If neither of two joint owners provides any of the purchase price, e.g., where they both received their joint interests by gifts or inheritance, then the estate of the first to die must include half of the property's value. In all these situations, when the second owner dies owning the property alone, its full value is included in the estate.

In addition, under certain circumstances, the Federal

Generation-Skipping Transfer tax may apply to impose an additional tax liability on a deceased joint owner's estate if the surviving joint tenant is in his or her grandchildren's generation or in a lower generation, such as great-grandchildren.

Q: May taxes be saved through joint tenancy?

A: Not necessarily. As reflected by previous answers, the property might be subject to estate tax in more than one estate. Proper planning through a will might eliminate tax on the property at the second death.

A will directing disposition of certain property to the spouse will generally have the same effect as if the property had been owned in joint tenancy.

Q: Are there other potential problems in joint tenancy?

A: Yes. Anytime co-owners disagree concerning the multitude of decisions that must be made concerning property, many difficulties and even expensive litigation may result. The mental incompetency of one joint tenant could require a guardianship for his or her share to make decisions affecting the property. Joint tenancies can be severed by bankruptcy proceedings, actions of creditors and other means.

Q: If joint tenancies have disadvantages, why have they been used so frequently in recent years?

A: Probably because they have been rather widely recommended by well-meaning persons who do not understand their complexities. Joint tenancies are very deceptive, because their advantages appear so simple while their disadvantages are not commonly known or understood.

Q: Does joint tenancy avoid probate?

A: Sometimes. After the death of a joint tenant, that person's interest in real property must be terminated to give clear title to the surviving joint tenant. This can be done in one of three ways. The surviving joint tenant, personal representative, attorney or affiant with personal matters within the affidavit, may terminate the joint tenancy by filing an affidavit and certified copy of the death certificate with the county clerk. Probate proceedings are not required. If the surviving tenant is not the spouse, a court proceeding called termination of joint tenancy is required to clear title. This procedure is simpler and less costly than



probating the entire estate. Finally, if other assets of the decedent require the estate to be judicially administered, the joint tenancy is severed as a part of the administration proceedings.

For small estates passing completely to a spouse, joint tenancies can save the expense of administering the estate on the death of the first to die. Joint tenancies in a large marital estate or joint tenancies with someone who is not your spouse, while saving the cost of “probate,” may have unanticipated consequences costing your family a far greater amount than the probate of a will. Please consult with an attorney.

Q: Are joint tenancies ever advisable?

A: In some cases, yes. However, they are rarely the best method of holding property. Only a lawyer is qualified to advise you on the best method of holding title to property and your case will differ from every other case.

The matter of joint tenancy involves many very difficult problems. Usually property of considerable value is involved, often all the property which one or two persons possess. Only the lawyer is specially trained and licensed by the state of Oklahoma, to advise on legal problems. See a lawyer BEFORE, not after, you are put to trouble and unnecessary expense.

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