



When Do You Need Joint Tenancy?

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, their interest automatically passes to the surviving joint tenant, who becomes the sole owner.

Q: Why do some people favor joint tenancies?

A: Because of the "survivorship" feature. If one co-owner dies, their 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 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 or another form of ownership, such as a trust.

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

A: Yes.

Q: Can either convey their interest to the other?

A: Yes.

Q: When title to real property is held by two joint tenants, can either alone convey their 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 joint tenants are married to each other and the property is the homestead of the couple, other restrictions apply. A conveyance by one joint tenant to a third party destroys the joint tenancy so that title is then held as tenants in common.

Q: When a bank or thrift institution account is opened in the names of two persons as joint owners, can either of them write a check against the account with or without the knowledge of the other?

A: Typically, yes. However, it is advisable to check with the financial institution regarding signature requirements.

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 the property 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 Jan. 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 Jan. 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 person 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 their 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, 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, 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), 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 their grandchildren's generation or in a lower generation, such as great-grandchildren.

Q: May taxes be saved through joint tenancy?

A: No. As reflected by previous answers, there can be significant tax disadvantages. Federal gift tax may be due upon the creation of a joint tenancy, and the property may be subject to estate tax in more than one estate. For these reasons, effective tax planning generally does not include the use of 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 guardianship for their share to make decisions affecting the property. Joint tenancies can be severed by a conveyance of one of the joint tenants to a third party, bankruptcy proceedings, actions of creditors or other means.

Q: If joint tenancies have disadvantages, why are they commonly used?

A: Probably because they have been widely recommended by well-meaning persons who do not fully understand their complexities. Joint tenancies can be deceptive in that the creation of a joint tenancy is fairly simple; however, the possible disadvantages, mentioned above, of joint tenancy ownership 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. In the first method, the surviving joint tenant, personal representative, attorney-in-fact or affiant may terminate the joint tenancy by filing, with the county clerk, an affidavit containing specific information required by statute and a certified copy of the death certificate. A second method to terminate a joint tenancy is by a court procedure called a judicial termination of joint tenancy. This procedure

is more simple and less costly than probating the entire estate. The third method to terminate a joint tenancy is by a probate proceeding for the deceased joint tenant. This method often occurs if other assets of the decedent require the estate to be judicially administered by way of a probate. If a probate proceeding is undertaken, the joint tenancy is terminated 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 through probate 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 a far greater amount than the cost of an estate plan involving a will and possibly a trust. Please consult with an attorney.

Q: Are joint tenancies ever advisable?

A: In some cases, yes. However, joint tenancy may not be 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 may involve difficult problems and issues. In most instances, the property involved is of considerable value and may be the primary asset of the parties. Only a 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 into trouble and unnecessary expense.

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