

JOINT TENANCY TROUBLES

Joint Tenancy is a common form of asset ownership.* If you own a bank account, brokerage account or perhaps real estate with one or more persons, then you and they may be Joint Tenants. The full legal expression for this form of ownership is *Joint Tenants with Rights of Survivorship (JTWROS)*.



Right of Survivorship

When one or more persons hold title to an asset as JTWROS, each of them owns the asset. When one Joint Tenant dies, the remaining Joint Tenants continue to own the asset. Ultimately, the sole surviving Joint Tenant owns the entire asset. This *Right of Survivorship* is one of the attractive legal features of JTWROS.

Not surprisingly, many JTWROS relationships are between family members. It just seems like the natural thing to do and, especially between spouses in a long-term marriage, it reflects the financial partnership of their commitment. Nevertheless, as with most things

in life, there are advantages and disadvantages to this form of asset ownership.

Advantages

When married couples acquire an asset together, the creation of JTWROS ownership between them is so common it should be called *Joint Tendency*.

If a Joint Tenant becomes incapacitated, probate may be avoided regarding any JTWROS assets. For example, the healthy spouse may continue to draw on the JTWROS bank account without interference because of their concurrent ownership rights. For this reason many widows,

INSIDE

Have you ever heard of Joint Tenancy? This form of property ownership can be a blessing or a curse, depending on the circumstances (outside of your control). Read our lead article to learn the good, the bad and the ugly of this common form of ownership.

On page three we review alternatives to the Joint Tenancy form of property ownership. Each should be carefully considered in light of their relative risks and rewards in accomplishing your estate planning goals.

widowers and other singles may add trusted family members or friends as Joint Tenants to their assets.

Upon the death of a Joint Tenant, probate will be avoided as long as there is at least one surviving Joint Tenant. This may result in substantial savings in terms of professional fees and court costs (and delays), as well as maintaining privacy. For these reasons some people add multiple family members, or even friends, as JTWROS on their assets to ensure having at least one trustworthy survivor upon their death.

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Disadvantages

Sometimes apparent legal simplicity may lead to unintended legal complexity. So it is with JTWROS. Before you decide to create or continue JTWROS ownership, consider the following potential pitfalls.

JTWROS may avoid probate upon incapacity and even at death ... but only if there is at least one living Joint Tenant (who also is not incapacitated). To ensure this, however, most people add non-spouses as Joint Tenants. Whether it is children, siblings or friends, this can turn JTWROS into **legal dynamite**.

Once you add someone as a Joint Tenant to a given asset, they also own the given asset just as you do. What you may have intended merely as a convenience has instead subjected the control, use and enjoyment of such asset to the potential liabilities of each Joint Tenant. These liabilities may come in many forms through your Joint Tenant, to include divorces, lawsuits, and creditors.

Your plans for the eventual distribution of your assets



may be lost through JTWROS ownership. For example, Wills, Revocable Living Trusts and even Premarital Agreements do not control assets held in JTWROS. Quite often assets passing to a surviving spouse later end up in JTWROS with a new spouse. That new spouse (and their children) ultimately may receive assets from the previous marriage instead of the children for whom they were originally intended.

No discussion of JTWROS would be complete without mentioning its potential tax consequences. Adding a Joint Tenant may be

a completed "gift" and thereby trigger unintended gift taxes. Depending on the total value of their estate, a married couple may forfeit valuable estate tax saving by excessive JTWROS ownership. Certainly no one wants to make the IRS a major beneficiary of their life's work.

* Note: While Joint Tenancy is most commonly found between married couples in *common law* states, residents of *community property* states also should understand it, especially given the mobile nature of our society.



Ask Yourself ...

These Questions Regarding "Joint Tenancy Troubles."

- | | | | |
|---|-----|----|----------|
| 1. I know how my assets are titled. | Yes | No | Not Sure |
| 2. I know my assets will avoid probate if I am incapacitated and upon my death | Yes | No | Not Sure |
| 3. I know my assets are not vulnerable to the potential problems of others. | Yes | No | Not Sure |
| 4. I know how my assets will be distributed according to my wishes. | Yes | No | Not Sure |
| 5. I know my assets will <u>not</u> be distributed to my spouse's next spouse, instead of our children. | Yes | No | Not Sure |
| 6. I know my assets will be protected from squandering by my heirs and protected for them from their potential divorces, lawsuits and bankruptcies. | Yes | No | Not Sure |
| 7. I know my current estate plan will avoid unnecessary federal estate taxes. | | | |

JTWROS ALTERNATIVES

Joint Tenancy with Rights of Survivorship (JTWROS) is a very common form of asset ownership for people seeking to avoid probate upon incapacity or death. Unfortunately, JTWROS can create many unintended and rather unfavorable consequences.

Fortunately, you can avoid probate through alternative planning methods without the risk of losing your assets due to the problems of others. Also, certain alternative methods can effect (not thwart) your estate distribution and federal estate tax minimization goals concurrently.

Incapacity Probate

Every adult American is responsible for making their personal, health care and financial decisions. Few people would choose to be declared legally incompetent by a probate court. In short, the probate process can be an unpleasant inconvenience for your loved ones, entails unnecessary expenses and opens your personal and financial circumstances to the public record.

The most fundamental legal instrument for avoiding incapacity probate is a *Durable Power of Attorney*. Through a *Durable Power of Attorney*, you may appoint your own decision-makers and can provide them with very limited or very broad powers. The legal authority of a *Durable Power of Attorney* stops upon your death. Other methods are necessary to avoid death probate.

Death Probate and Estate Distribution

Some state legislatures have authorized non-probate distribution methods for virtually every type of asset imaginable. Perhaps you have heard of such arrangements as *Pay on Death* bank accounts, *Transfer on Death* automobile titles, or even

Beneficiary Deeds. These certainly are preferable distribution methods when compared to JTWROS. Nevertheless, probate may not be avoided unless **all named beneficiaries** are adults, have legal capacity and survive you. Similarly, these methods do not facilitate federal estate tax minimization. Bottom line: Like JTWROS, statutory non-probate transfer methods should only be employed with an appreciation of the risks involved.

Revocable Living Trusts

Much has been written about *Revocable Living Trusts* over the past few decades. For some people *Revocable Living Trust (RLT)* planning is too much, for some it is too little and for some it is just right.

Basically, an RLT is a legal arrangement between three parties ... and you are all three parties. You are the *maker* of your RLT, serve as its *initial manager*, and enjoy the assets it controls as its *initial beneficiary*. As a

result, whether you are healthy, incapacitated and even after your death, you can control who manages your assets held in the RLT and who benefits from them.

An RLT is one of the best all-around legal instruments available for probate avoidance, estate distribution and federal estate tax minimization (for married couples). However, to work properly all of the legal *i*'s must be dotted and all of the legal *t*'s must be crossed.



POCKET PROTECTORS

Tips to help you protect your pocket!

Federal Deposit Insurance Corporation - Are You Protected?

The FDIC (Federal Deposit Insurance Corporation) is an independent agency of the United States government that protects you against the loss of your deposits if an FDIC-insured bank or savings association fails. Since the FDIC's creation in 1933, no depositor has ever lost even one penny of FDIC-insured funds. But how safe is your money? In this era of bank bailouts, more Americans since the great depression are watching the ever-growing list

of bank failures. Fortunately, you can check the status of your bank online, early and often, at www.fdic.gov. While you are there be sure to review the requirements to maximize your account protection under the FDIC rules, especially if you have accounts held in a *Revocable Living Trust*.

In addition to online help, the FDIC provides a toll-free number to answer questions about coverage for *Revocable Living Trusts*. For assistance, call 877-275-3342.

“Action speaks
louder than
words but
not nearly
as often.”

— Mark Twain

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