

Why Joint Tenancy Is Often a Terrible Thing

Joint tenancy is a very popular form of ownership. But it can also cause serious unforeseen problems. Here are some of the risks attendant to joint tenancy ownership of assets.

Joint Tenancy Puts Your Assets Unnecessarily at Risk. Assets that are owned in joint tenancy are legally available to satisfy the debts and liabilities of any joint tenants. If you are retired, you are at relatively low risk financially. Adding your child's name (or children's names) as a joint tenant can mean that your assets are one layoff notice, wreck, divorce or medical calamity away from being lost. And by "lost," we meant lost **in full** – not just "her half" or "his third."

Joint Tenancy Can Grossly Distort Your Estate Plan. Many older people, especially widows and widowers, will add the name of their oldest child, or the child that lives closest to them, to all of their bank accounts and investments "for convenience," so that "if something happens" that child can "take care of things" for them. They believe that, when they die, those bank accounts and investments will be distributed in accordance with the terms of their Will, which provides for distribution in equal shares among their children. If you believe that, you are wrong. All of your joint tenancy assets will, by operation of law, *regardless of what your Will provides*, pass to the child you have named as joint tenant. That child may or may not decide to share with siblings. If that child does decide to share, a gift tax return may need to be filed in order to avoid the imposition of gift tax liabilities.

Joint Tenancy Has No Back-Up Plan. Many people view joint tenancy as a simple and cost-free means of avoiding probate. They assume that when they die, the joint tenant will inherit everything. But if that is your plan, what happens if the other joint tenant dies first? If your answer was something other than, "those assets would end up in probate," guess again. If your answer was, "then I'd change it," what happens if you have become incompetent since the time you set up the joint tenancy? The fact is, joint tenancy has no back-up plan.

The First Joint Tenant to Die Has No Ultimate Say-So. Many husbands and wives own virtually all of their assets in joint tenancy, figuring that when the first of them dies, everything will go to the survivor, and then when the second spouse dies, it will go to their children. But if you are the first spouse to die, there is no guarantee that things may work out that way. If your widow or widower remarries and puts all of those assets into joint tenancy with a new spouse, that new spouse may outlive him or her. If that happens, your entire estate would pass to someone you never met, and your children would inherit nothing.

If you and your spouse each have children from previous marriages, the risks are even greater. If you die first, then unless your surviving spouse has – and chooses, with no obligation, to maintain after you die – an estate plan that specifically provides for your children, then your children will end up inheriting nothing from you.

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The fact of the matter is, if you're the first joint tenant to die, you forfeit any right to determine what will happen with any joint tenancy assets after you die.

Joint Tenancy Can Cause A Medicaid Eligibility Nightmare. This is a true story. A woman with just under \$60,000 to her name had a severe stroke and had to be placed into a nursing home. Many years before, she had added her five children's names to her bank accounts. One of her children wondered aloud about what might be done to prevent her money from being spent down to pay for her nursing home care. A well-intentioned banker, being familiar with banking rules but not with Medicaid laws, suggested that the children could each withdraw their proportionate shares of the money from the accounts. It didn't matter that Mom lay severely incapacitated in the nursing home. She didn't need to sign anything. So that's what they did.

Then Mom spent the rest of her money paying for her nursing home care, and the children each spent their shares paying off bills and buying things they needed. At which point Mom, who was now flat broke, applied (her oldest child filled out the application) for Medicaid long-term care benefits.

The result? Her application was denied, and it was determined that she would remain ineligible for benefits for the next sixteen months. How could that possibly be, wondered her shocked and panicked children? Here's how. The Medicaid laws consider that joint tenancy assets belong to the Medicaid applicant, absent proof that the money in the account is "somebody else's money." That is the case no matter how many years the joint tenancy has been in place. The withdrawal of funds from those accounts was considered legally as gift transfers from Mom to her children, even though she neither participated in nor even knew about the withdrawals.

The nightmare result? Mom was ineligible for Medicaid, and unable to pay for the nursing home care she desperately needed. And so the nursing home had to send her "home" – wherever that was.

There are better, safer ways to plan your estate than subjecting your assets to the substantial risks associated with joint tenancy ownership. **Better Estate Planning will find the alternatives that will work best for you. Your estate plan will protect your assets without sacrificing convenience.**

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