



## 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, in most cases, the healthy spouse may continue to draw on the JTWROS bank account without interference because of their concurrent ownership rights. For this reason

## 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.

many widows, 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 and the estate tax laws, 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. Do I know how are my assets are titled?   | Yes | No | Not Sure |
| 2. Will my assets avoid probate if I am incapacitated and upon my death?   | Yes | No | Not Sure |
| 3. Are my assets protected from the potential problems of others?  | Yes | No | Not Sure |
| 4. Will my assets will be distributed according to my wishes?  | Yes | No | Not Sure |
| 5. Will my assets be distributed to my children as I intend them to be — instead of unintentionally passed on to my spouse's next spouse?    | Yes | No | Not Sure |
| 6. Would my assets be protected from squandering by my heirs and protected for them from their potential divorces, lawsuits or bankruptcies? | Yes | No | Not Sure |
| 7. Will my current estate plan avoid unnecessary federal estate taxes?   | Yes | No | Not Sure |

# 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 may 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!

#### Unmarried Resources

According to the U.S. Census Bureau, there are some 99.6 million unmarried Americans age 18 and older (America's Families and Living Arrangements: 2010). If you are single, you can find many support communities for singles, both locally and online. This is the "Mission Statement" for one online organization:

"The Alternatives to Marriage Project (AtMP) advocates for equality and fairness for unmarried people, including people who are single, choose not to marry, cannot marry, or

live together before marriage. We provide support and information for this fast-growing constituency, fight discrimination on the basis of marital status, and educate the public and policymakers about relevant social and economic issues. We believe that marriage is only one of many acceptable family forms, and that society should recognize and support healthy relationships in all their diversity."

To learn more, visit the AtMP website at: [www.unmarried.org](http://www.unmarried.org).



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