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No. 11 Vol. 3

November 18, 2005

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Joint Tenancy – the Time Bomb of an Estate Plans.

By Neil Derman, Esquire

Joint ownership of Assets is one of the most common plans used by families to protect their assets. If you are married, you likely own most of your assets jointly and your spouse will most likely inherit all of your assets when you pass away.

Most people are not aware of the various ways one can hold assets. If two unrelated individuals own an asset it is likely held one of two ways: as joint tenants with rights of survivorship or as tenants in common.

With property held as tenants in common, when one of the owner's passes away, their interest in the property will pass through their probate estate or via their will. The surviving owner will not receive the deceased owner's interest unless the will specifically states they are to inherit that portion of the property.

An asset held as joint tenants with rights of survivorship means that the surviving owner of the property will immediately inherit the deceased owner's interest in the property. It alters the asset to a non probate asset and does not pass via the will, but passes by a contractual right outside of the probate estate. In New Jersey the statutes opine that if not specified, it is assumed that the property is held as joint tenants with rights of survivorship.

Finally, if a husband and wife own a piece of property jointly it is termed tenancy by the entirety. This operates much like a joint tenancy with rights of survivorship. The issues that arise are that the majority of people believe that a joint tenancy will help a couple avoid probate and provide them with sufficient control over the asset. However, this is not truly the case when it comes to joint ownership.

Let's assume Joseph and Rachel are married and like most couples own their house jointly. If Joseph was to pass away, what would happen to that property? Upon his death the property would pass immediately to Rachel, and Joseph would avoid probate. Rachel would now become the sole owner of the property. Everything seems to have been accomplished according to plan. But, when Rachel passes away the property is held in her name solely. All assets held solely in ones name that do not designate a beneficiary or are contractually obligated are probate assets. Therefore the house is now a probate asset. Joint tenancy did not avoid probate it merely postponed it. In addition, other issues may arise from joint ownership.

Let's assume Rachel and Joseph had children, David and Sarah. It was always Joseph as well as Rachel's wishes that all their assets pass to their children David and Sarah upon their passing. After Joseph's death, Rachel meets Brian. Brian has two children of his own, Karen and Helen. Rachel marries Brian and places the home in both of their names. Brian's previous will named his two children, Karen and Helen as his beneficiaries. If Rachel passes away before Brian, the house would be owned solely by Brian. Brian is under no legal obligation to give anything to Joseph and Rachel's children. The house belongs solely to Brian and he can do with it as he wishes. Should he pass without changing his will the property would pass

to Karen and Helen, disinheriting David and Sarah. Joseph and Rachel have now unintentionally disinherited their children.

Other issues can arise with joint ownership. If one of the owners becomes incapacitated, a court would need to step in to appoint someone to assist the incapacitated owner. This may create issues between the original owner and the newly appointed owner. Although it is easy to add an additional owner to a joint venture, removing a joint owner from a property may be a very onerous task. Often the removal of a joint owner requires the use of the legal system which can be very cumbersome.

There are strategies that can be used to avoid issues among joint ownership. Utilizing trusts, separation of the asset among the owners, and careful planning of your assets at death and at remarriage through certain contracts can help shelter the asset from being exposed to the problems mentioned above. Without these techniques, a joint asset may merely be an asset that merely postpones the inevitable. The last person to pass away would be the person subject to estate taxes, which is not an efficient use of a tax savings strategy.



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

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