

Joint Tenants with Right of Survivorship: Planning Pitfalls to Consider

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You work hard to accumulate assets for yourself and your family. However, you probably have never given much thought to how you should own your assets or how ownership arrangements can impact your overall estate plan. One common form of property ownership is Joint Tenants with Right of Survivorship (JTWROS), which results in the automatic transfer of a jointly owned asset to a surviving owner upon another owner's death. Although JTWROS is often looked upon favorably, it can cause a variety of estate planning problems.

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Joint Tenants with Right of Survivorship

In the United States, property may be owned in several different ways, and the form of property ownership is very important in estate planning. It determines how and to whom a property passes upon the death of an owner, and the extent to which the value of the property is included in the deceased owner's gross estate for federal estate tax purposes.

The unique feature of JTWROS is that, by law, ownership of the property passes automatically to the surviving joint owner(s), not according to the deceased owner's last will and testament or his or her trust. Therefore, regardless of the terms of your estate plan, any property you own as JTWROS will pass automatically to the surviving joint tenant.

Inadvertent Disinheritance

The first planning pitfall associated with this form of ownership is inadvertently disinheriting someone that you meant to benefit from the property upon your death.

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For example, Drs Michael and Terri Smith are married and own all of their property jointly. Michael has a child from a previous marriage, and he wants to make sure that his child receives a vacation home that has been in his family for 3 generations. When Michael and Terri met with their estate planning attorney, Michael left the vaca-

tion home to his child in his will. However, Michael added Terri to the deed when they were married, and they currently own the property jointly with rights of survivorship.

What happens if Michael predeceases Terri? Terri will receive the vacation property automatically, regardless of the terms of Michael's will. The result is that Michael will have unintentionally disinherited his child from a deeply cherished family asset. If Terri remarries, she and her new husband could own the property jointly. Then, the property would automatically pass to Terri's new husband if she predeceases him.

Exposure to Claims of Joint Creditors

When property is owned jointly with right of survivorship, the property may be subject to the claims of creditors of each joint owner. This can be a significant issue, especially when parents own property with their children. For example, a parent may find his or her property subject to a divorce or bankruptcy proceeding, or subject to other creditor claims involving his or her children.

Unintentional Taxable Gifts

When an individual owner of an asset decides to name another individual as a joint owner of a property, that individual has made a gift to the joint owner. If the new joint owner happens to be someone other than the original owner's spouse, a taxable gift may result, depending on the value of the property.

Taxation of Jointly Owned Property

Generally, when nonspouses own

property as JTWRROS, the entire value of the property is included in the gross estate of the first joint owner to die. To avoid this result, the estate of the first joint owner to die must prove that the surviving joint tenant(s) contributed toward all or part of the cost of acquiring the property. Without doing so, the full value of the asset will be included in the first owner's taxable estate. Thus, if a parent owns property jointly with a child, the full value of the property will be included in the parent's taxable estate if the child did not contribute anything toward the purchase price.

This is not the case where the joint owners are spouses. Under these circumstances, only 50% of the value of the property is included in the gross estate of the first owner to die. It is not necessary that a spouse contribute toward purchasing the property.

Estate Tax Allocation Problem

Jointly owned property can also

cause significant tax allocation problems. If estate taxes are due at your death, the estate tax burden is allocated to your assets under the terms of your will. Typically, an individual's will states that all taxes are to be paid from the residue of the estate. If so, then the individuals who inherit the residuary estate will bear the estate tax burden associated with those assets.

The result is that a surviving joint tenant will not be responsible for any portion of the estate tax for any jointly owned property that passes to the surviving joint tenant, unlike other beneficiaries of your estate. Thus, careful planning is required to determine if estate taxes at your death should be allocated to any jointly owned property or other assets that pass outside the terms of your will.

Conclusion

Because taking title to property as JTWRROS is simple and inexpensive, it is a very common way to own property—especially because

property held this way will avoid the expense, delay, and publicity of probate proceedings. As a result, you may be unduly biased in favor of forming a joint tenancy when you may be better served by using another planning strategy. Therefore, you should make sure that you fully understand the advantages—as well as the disadvantages—of a joint tenancy compared with alternative strategies, and/or consult with an attorney or tax professional to discuss how titling assets this way may affect your overall estate plan. ●

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Patient and Provider Access

What a Continually Divided Congress... *Continued from page 34*

It was discussed that the health subcommittees of the House Ways and Means and the House Energy and Commerce committees are floating ideas for legislation to fix the fundamentally flawed formula.

All of the panelists have heard rumblings that this may be the year that we actually see legislation introduced, but the particulars of such legislation—and how it will be paid for—are

still unknown. However, each panelist did stress the importance of advocacy and the impact that the provider community could have on this issue. As committee members on both sides of the aisle float ideas on repeal, it will be vitally important that ACCC members let their members of Congress know how the flawed SGR formula impacts them and their ability to care for their patients.

Get Involved

The 39th Annual National Meeting was a great success thanks to the participation of ACCC's members and supporters. Members are encouraged to get involved in grassroots advocacy to help shape the policies impacting cancer care. For more information and ways to get involved, please visit www.accc-cancer.org/advocacy. ●