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Should I own my property in Joint Tenancy?

“Joint Tenancy With Right of Survivorship” means that each person has equal access to the property. When one owner dies, that person’s share immediately passes to the other owner(s) in equal shares, without going through probate. This is the opposite of owning property as “Tenants in Common” wherein when one of the owners dies, his or her share passes down to their respective descendants. We’ve all been told that Joint Tenancy is a simple and inexpensive way to avoid probate, and this is sometimes true. But the tax and legal problems of Joint Tenancy ownership can be mind-boggling. Below are some of the issues that could arise if property is held in Joint Tenancy:

#1: Owning property jointly doesn’t avoid Probate completely. When either joint tenant dies, the survivor -- usually a spouse or a child -- immediately becomes the owner of the entire property. But when the survivor dies, the property still must go through probate. Joint Tenancy doesn’t avoid probate; it simply delays it. If you want to avoid this situation, you should get information about revocable and irrevocable trusts and family limited partnerships.

#2: Two Probates When Joint Tenants Die Together. If both of the joint tenants die at the same time, such as in a car accident, there will be two probate administrations, one for the share of each joint tenant in the Joint Tenancy property as well as any other property they each may own.

#3: Unintentional Disinheriting. When blended families are involved, with children from previous marriages, here’s what could happen: the husband dies and the wife becomes the owner of the property. When the wife dies, the property goes to her children, leaving nothing for the husband’s children.

#4: Gift Taxes. When you place a non-spouse on your property as a joint tenant, you make a gift of property every time that joint tenant takes property out of the account. For example, when a mother re-titles her \$500,000.00 home in Joint Tenancy with her son, she makes a gift to her son of \$250,000.00. This may not be the most efficient use of her \$14,000 annual exclusion. The main point is that the gift is unintentional and not carefully planned.

#5: Right to Sell or Encumber. Joint Tenancy makes it more difficult to sell or mortgage property because it requires the agreement of both parties, which may not be easy to get.

#6: Financial Problems. If either owner of Joint Tenancy property fails to pay income taxes, the IRS can place a tax lien on the property. If either owner files for bankruptcy, the trustee may



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be permitted to sell the property even though the other joint tenant is not otherwise involved in the bankruptcy.

#7: Court Judgments. If either joint tenant has a judgment entered against them, such as from a car accident or business dealings, the holder of the judgment may be able to execute the judgment against the Joint Tenancy property.

#8: Incapacity. If either joint owner becomes physically or mentally incapacitated and can no longer sign his name, you may have to seek judicial approval before any jointly owned property can be sold or refinanced -- even if the co-owner is the spouse.

Owning property jointly is the customary standard, especially when owned by spouses. However, that doesn't mean that type of ownership should be taken for granted. If you have a situation in your life where you need to consider either protecting that asset or designing how it will be distributed upon your death, you should become familiar with all types of property ownership and place your property in the type of ownership that best suits your needs.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.