

Be aware of the ins and outs of holding joint title to property

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Owning assets jointly with one or more children or other heirs is a common estate planning “shortcut.” But like many shortcuts, it can produce unintended — and costly — consequences.

Advantages

There are two potential advantages to joint ownership: convenience and probate avoidance. If you hold title to property with a child as joint tenants with “right of survivorship,” when you die, the property is transferred to your child automatically. You don’t need a trust or other estate planning vehicles and it’s not necessary to go through probate.

Disadvantages

Joint ownership offers simplicity, but it can also create a number of problems, especially if you add someone as a co-tenant instead of a joint tenant with right of survivorship, including:

Unnecessary taxes. Adding a child’s name to the title may be considered an immediate taxable gift of one-half of the property’s value. And when you die, the property’s value then will be included in your taxable estate, though any gift tax paid with the original transfer would be allowed as an offset.

Creditor claims. Joint ownership exposes the property to claims by your co-owner’s creditors or former spouses.

Loss of control. Your co-owner may be able to dispose of certain property without your consent or prevent you from selling or borrowing against certain property.

Unintended consequences. If your co-owner predeceases you, his or her share of the property may pass according to his or her estate plan or the laws of intestate succession. If you hold the property as co-tenants, instead of joint tenants with the right of survivorship, for instance, you'll generally have no say in the ultimate disposition of that portion of the property.

One or more properly drafted trusts can avoid each of these problems without the need for probate. If you have additional questions on how to address your assets in your estate plan, please contact us.

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