

Joint Ownership - Pitfalls to Avoid



Many people use joint ownership as a simple method of estate planning. While joint ownership is appropriate in some circumstances, it is a blunt tool that can cause greater problems than it is intended to solve, where used incorrectly or in circumstances where the intention underlying the transfer is not clear.

In estate practices, there is a common occurrence of joint tenancies that have had serious and unintended negative consequences – these are the “pitfalls of joint tenancy”.

One of the pitfalls is that the owner of the asset gives up the sole right to control it. Let’s say a mother places her adult child on title to her home to avoid probate fees. Some years later, there is a falling out between the mother and the child. If the mother later wishes to sell her home, she requires the child to sign off on the sale, since they are both on title. It is a simple matter for the estranged child to refuse to sign the sale document, or more likely, to demand payment for his or her “share” of the sale proceeds as a condition of signing. The result is that the mother either has to give in to the demand, or end up in potentially long and costly litigation against her child.

There are ways to avoid, or at least mitigate, the risk of loss of control inherent in joint

ownership arrangements. For instance, the mother and children could sign a document clarifying the nature of their shared ownership.

Another pitfall of joint tenancy is that it often results in disputes and, frequently, litigation, after the person has passed away.

Take the classic situation of an elderly parent who adds one child on title to a property and a bank account. Without documentation of the parent’s intention, it is impossible to know whether the parent intended that the joint tenant child would receive the property and bank account when the parent died, or the joint tenant child would divide up the property and bank account amongst the other estate beneficiaries.

If a person is considering putting his or her asset into joint tenancy with another person, particularly if that other person is not a spouse, they should seek legal advice to make sure that intentions are properly documented. While there is no sure way to avoid conflicts, proper documentation is the best and most effective way to reduce risk.

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