

Joint Tenancy is not a Replacement for Proper Estate Planning

(1) Tax consequences:

- (a) Gift tax: when you add a person's name, you make a gift to that person. If the gift exceeds the annual gift tax exclusion amount, you are responsible for filing a gift tax return and paying a gift tax (or electing to lose the gifted amount from your estate tax exemption amount).
- (b) Estate tax: when a property is held as joint tenants, and one owner dies, the full value of the property is included in the decedent's estate. The full value of the property will then be included in the estates of the remaining owners, as each of them die.
- (c) Income tax: a person who receives a gift takes the original owner's "carryover basis." When one owner dies, only that owner's interest is "stepped up." Contrast this to owning a property, setting up the appropriate estate plan, and allowing intended beneficiaries to inherit the property with a full "step up in basis." A beneficiary who inherits a property upon the owner's death and receives a full "step up in basis" can turn around and sell the property (before it further appreciates) without owing any income tax. But the beneficiary who receives the lifetime gift may owe considerable income tax, especially if the property has appreciated and its fair market value is much greater than what the original owner paid for the property. This is often the biggest disadvantage of joint tenancy arrangements.

(2) Loss of control: by adding owners to a title, the original owner loses exclusive control over the property. If the original owner wants to sell or re-gift the property, the new owners may not agree. The original owner would then have to sue the new owner (and win) before taking the desired action. In addition, with some types of property (i.e., a bank account), a new owner could take all the property, contrary to the original owner's intention.

(3) Potential litigation: adding new owners to property subjects the property to the new owners' creditor claims (including bankruptcy) and claims from divorcing spouses.

(4) Minors cannot own property: adding owners to a title does not work if the intended beneficiaries are under age 18, or otherwise younger than the age at which you would prefer giving them full control over property.

(5) Ignores incapacity planning: if the original owner, or any of the new owners, become incapacitated, and no durable power of attorney was executed, a conservatorship proceeding will be required.

(6) Merely delays the inevitable: even when new owners are added, this does not prevent all the owners from dying in a common accident, or the last owner from eventually dying. At some point in time, probate will likely be required.