

All Things Joint

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ALL THINGS JOINT

In estate planning when one refers to joint accounts or joint assets one is referring to all assets, both personal property and real property, which by law are considered to be owned as joint tenants and not as tenants-in-common. In order to be considered joint property four indicia or as they are sometimes unities called must be present:

- 1) unity of title - all joint tenants must take under the same instrument;
- 2) unity of interest - the interest of each party must be identical in nature, extent and duration;
- 3) unity of possession - each party must have undivided possession of the whole property;
- 4) unity of time - the interest of each party must vest at the same time.

Property held as joint tenants must therefore be owned by two or more persons in equal proportions; that $\frac{1}{2}$ - $\frac{1}{2}$ or $\frac{1}{3}$ - $\frac{1}{3}$ - $\frac{1}{3}$ with identical interests and an equal right to use the whole of the property. Upon the death of a joint owner, the deceased's interest passes automatically to the surviving joint owners. Property held in joint tenancy is deemed to pass immediately prior to death and therefore upon death the jointly held property does not form part of the deceased person's estate. Whereas property held with others as tenants-in-common does form part of the owner's estate on that person's death. While interests in joint tenancy must always be held in equal shares, tenants-in-common may hold different proportions of a particular property, example, $\frac{1}{4}$ - $\frac{3}{4}$.

When Joint is Not Really Joint

If you have a joint asset, then unless a contrary intention is shown, it will pass upon death pursuant to a right of survivorship. For example, if you hold a joint bank account without a right of survivorship, what you in fact have is a bank account that you hold with another as tenants-in-common as one of the hallmarks of joint tenancy is that upon death the asset automatically devolves upon the surviving joint tenant or tenants. When a party, usually a parent, comes to see you about transferring property into joint tenancy with one or more of their children, below are some of the potential problems you may wish to point out to your client:

- 1) changing ownership of an asset may have tax implications;
- 2) changing ownership may expose the jointly held asset to a matrimonial claim by one of your children's spouses or claims by creditors;
- 3) ownership of the asset may ultimately end up with persons other than those who the deceased wanted to receive the property, for example a child and his or her spouse dies