



Joint Tenancy

What is Joint Tenancy?

Two or more individuals can own assets together in joint tenancy. In “joint tenancy,” each owner has an equal and undivided interest in the property. Most importantly, a joint tenancy creates a “right of survivorship,” which means that when one owner dies, his or her interest passes to the surviving joint owner(s). For example, with respect to a financial account, each owner who contributes funds to the account has an equal right to access or withdraw money in the account during their ownership. When one joint owner on the account dies, their interest passes to the remaining owner(s).

A deed or other document reflecting the title to real property usually contains the words “joint tenants,” “joint tenancy,” or “joint tenancy with right of survivorship” when the property is owned in joint tenancy. If an asset is not owned in joint tenancy, then the asset is owned as tenants in common.

What is Tenancy in Common?

Two or more individuals can also own assets together as tenants in common. Tenancy in common means that each owner owns a particular percentage of the asset. Upon the death of one of the tenants in common, their percentage of the asset passes to the deceased person’s heirs or beneficiaries. For example, if there are two tenants in common on real property and one of the tenants in common dies, the first tenant in common retains their 50% interest in the real property and the deceased owner’s interest passes to his or her heirs or beneficiaries, which could result in multiple individuals owning the real property after the death of a tenant in common.

What is Tenancy by the Entirety?

In other states, two spouses can own property by tenancy by the entirety. Colorado law does not recognize tenancy by the entirety. Property in Colorado can only be owned between two or more individuals in joint tenancy or as tenants in common.

What if I Want to Add Someone as a Joint Owner on My Asset?

Before you change the title or ownership of an asset, understand that any such change can cause significant legal and/or tax consequences.

If someone is a joint tenant, they have ownership rights to that asset. If you want someone to access your bank account while you are alive, you can consider alternative options, such as adding them as a signer on the account or executing a financial power of attorney. Similarly, adding someone on the title to your house so that they become an owner while

you are alive is very different from executing a will or a beneficiary deed to leave the property to the person after you die.

You should seek the advice of an attorney about the options available to you before you consider changing the title of your assets. Consider the advantages and disadvantages of joint ownership listed below.

Advantages vs. Disadvantages of Joint Tenancy

Advantages:

- Owning an asset in joint tenancy allows the surviving owner(s) to receive the asset outside of any probate estate process because the title to the asset is transferred by operation of law.
- For Medicaid beneficiaries, if real property is owned in joint tenancy, there are limited circumstances in which the real property becomes subject to estate recovery claims by the Colorado Department of Health Care Policy and Financing.

Disadvantages:

- If the original sole owner of an asset applies for Medicaid benefits within 5 years of a change in the asset’s title to multiple owners, Medicaid may consider the change in title to be a transfer without fair consideration and impose a penalty period on the Medicaid applicant’s eligibility to receive benefits.
- Property owned in joint tenancy is subject to the liabilities and creditors of each joint owner. For example, if one joint owner is held liable in a civil lawsuit, the plaintiff or creditor can force the sale of the entire property.
- If either joint tenant files for bankruptcy, the asset becomes a part of the bankruptcy estate.
- If a financial account is owned in joint tenancy and both joint owners contribute funds to the account, any of the joint tenants has the right to make a withdrawal of any amount at any time.
- Adding someone to the title of an asset as a joint owner may have gift tax implications. You should consult with an attorney or tax professional regarding any tax implications of change of ownership.
- Assets owned in joint tenancy are not subject to the terms of a will. Therefore, adding someone as a joint owner on an asset may cause unintended changes to how your assets will be distributed upon your death.

What is the Process for Transferring Title when a Joint Tenant dies?

The most common assets owned in joint tenancy are real property and financial accounts. In order to transfer the deceased joint tenant’s interest to the surviving joint tenant(s)

for real property, usually all that is required is the recording of the death certificate and an affidavit in the Clerk and Recorder's Office in the county where the property is owned. To transfer title of a financial account, usually the financial institution will require presentation of the death certificate.

Does my Will affect property held in Joint Tenancy?

Assets in joint tenancy are not governed by the terms of your will. Joint tenancy property passes directly to the surviving joint tenant(s) and does not go through the probate process. Therefore, it is important to understand how your assets are titled and how your estate plan might be affected by the titling of your assets.

For example, in her will, Mary expresses a desire to have all her assets split evenly between her son, John, and her

daughter, Sara. As she gets older, Mary asks John to help pay bills and take care of her other expenses. Mary talks to her bank and learns that John can write checks and access her checking account if he is added as a joint tenant. Accordingly, Mary retitles her checking account to include John as a joint tenant. Mary dies several years later. At the time of Mary's death, John was still a joint tenant on her checking account. As a result of including John as a joint tenant, the entire checking account is owned by John after Mary's death, despite Mary's clear intent in her will to leave her assets to both John and Sara. Unfortunately, Sara's options to recover her share of the checking account after Mary's death may be limited and expensive.

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