

# Joint Tenancy: Convenience at a Price

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With such a strong focus on home ownership, we should take a moment to address the issue of legal title. Most people have legal title to their home in joint tenancy – two or more persons own the home together as “joint tenants.” Legally, that means when one person dies, all of the deceased owners' interest in the property is transferred immediately to the surviving owners. Therefore, if John and Mary own property in joint tenancy, and John dies, then Mary owns the entire property outright. While certainly a convenient method of ownership, there can be some unexpected costs. Here are some things to think about when it comes to owning assets (such as your home) in joint tenancy:

Some married couples and others see Joint Tenancy has a probate avoidance tool. After all, if they own property together, there is no need to go to court if someone dies. Joint Tenancy with your spouse may avoid probate on the first death, but not the second. You are not “avoiding” probate but simply “postponing” it. This may expose your family to thousands of dollars of unnecessary court costs, not to mention the time it takes an asset to make its way through the court system. Sure you could keep adding joint tenants, but there may be unfavorable tax consequences, not to mention family squabbles. Joint tenancy doesn't mean you are necessarily going to avoid probate court. While you may avoid probate on a specific item of property, you still may end up in probate with respect to other items. In other words, you end up in probate court anyway which is exactly what you were trying to avoid in the first place. Once in probate court, a judge could order that all assets be preserved and/or unsold until the entire matter is settled.

You may also have less control over the property if it is held in joint tenancy. After you pass away, you really have no say in what happens to the property. Property owned by the surviving joint tenant will pass to that tenant's heirs, which may not be appreciated by the decedent's relatives. This sometimes leads to “unintentional disinheritance.” In this author's estimation, this is the scariest result of joint tenancy. For example, let's say that Mary and John own prime Santa Clarita real estate worth \$850,000 in joint tenancy (as many people do). They have no kids, and they have not prepared a will. One day, Mary passes away in a car accident. The property is then entirely John's as the surviving joint tenant. So far, so good.

However, John dies a year later. The property then goes to John's mother who inherits under California law. Mary's family is out of luck. They receive \$0 of the \$850,000 house. You see, joint tenancy trumps even if there is a will saying otherwise. It gets even worse if the surviving spouse finds a “new love.” What if John married the gorgeous “Suzy” after Mary's death and puts Suzy as his joint tenant? In that case, if John died, Suzy gets everything. Both Mary's family and John's family are out of luck (which could be even more problematic if John and Mary had kids). Don't let “Suzy” do this to your family! Remember, with joint tenancy, “last person standing” gets the property outright...and they may not feel like sharing.

Some people put their adult children on title with them as joint tenants. The parent's logic is that by doing so, they allow the house to pass to their children more easily upon the parent's death. However, owning assets with adult children is usually a bad idea. Why? First, if there is a divergence of opinion regarding the asset, it can cause real strife between parent and child. Second, joint tenancy may also lead to unintended beneficiaries, such as creditors of the child or a divorcing spouse who suddenly has an interest in your home! Putting adult children on title may be deemed a gift by the Internal Revenue Service for which there may be taxable consequences.

Anytime you add someone's name to an asset, you are effectively adding a "bullseye" to that asset. If you own property in joint tenancy, you may be exposing the asset to creditor claims. They don't even have to be your creditors. If one joint tenant gets into trouble, the entire property may be placed in danger. Why would you want to expose your home or bank account to additional potential liability?

Also, putting an adult child on real estate title as joint tenant may cause a big capital gains tax problems. For example, let's say your parents bought their home in 1968 for \$50,000. It is now worth \$600,000. If your parent puts you on title, you then absorb your parent's cost basis which can mean big tax consequences when you come to sell the property. You would have to pay taxes on the gain of \$550,000.

If your parents' property were held in a living trust, you could inherit the property and sell it soon after, generally without any tax consequence since you would get a step-up in the cost basis. In the above example, you would get the house via inheritance valued at \$600,000. You sell it the following week for \$600,000 and there are no taxes due because there was no "gain." Even if a married couple holds their residence in joint tenancy, it is possible that more capital gains tax may be due upon a sale than otherwise necessary because only half of the property receives a new cost basis upon one spouse's death.

Joint Tenancy can also lead to family disagreements. All owners may not be in agreement about what to do with a piece of property. For example, let's say three siblings own property as joint tenants. Two children may want to sell property because they need money or are tired of paying the property taxes. The remaining child doesn't want to sell. In fact, he wants to live in the house forever and have the siblings share the property taxes and other maintenance costs. This happens more often than you think, and children end up in court. Joint tenancy is also difficult to change. Also, once you add a joint tenant to your property, you can't simply take them off the title. They have to agree to it, which may also lead to unnecessary strife.

Therefore, owning property in joint tenancy may be an easy solution at first. However, it may prove to be a poor choice in the long run. Consult an estate planning attorney to see if joint tenancy is right for you, or if some other form of ownership may be more advantageous. You may have to think several steps ahead, but that is what planning is all about.