

## Joint Tenancy in Estate Planning

Written by Duluth, MN business attorney Patrick Spott

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Joint tenancy is a common tool used in estate planning. Often referred to as “the poor man’s will,” joint tenancy is a special form of property ownership in estate law. The owners of the property, referred to as “joint tenants”, share equal ownership of the property and have the equal, undivided right to keep or dispose of the property. Joint tenancy is commonly used among spouses, parents and children, and small business partners. Joint tenancy also creates a “Right of Survivorship,” meaning that if one of the joint tenants passes away, the remainder of the property is transferred to the surviving tenants. Due to right of survivorship, joint tenancy allows individuals to transfer assets while avoiding the probate process.

The right of survivorship is what separates joint tenancy from other forms of property ownership, particularly Tenancy in Common. Like joint tenants, tenants in common share property simultaneously. When a tenant in common passes away, their share of the property is passed on to their heirs (or as outlined in their will or trust) with possible consequences of probate, attorneys’ fees, and estate taxes.

At first glance, joint tenancy appears to be a cost-effective and smooth process of transferring property. Additionally, joint tenants avoid the probate process. However, there are many risks of using joint tenancy in estate planning. Joint accounts with children are a common among aging parents looking for a cost effective means of distributing their property after death. Unfortunately, many parents have the falsely held believe that the child they designate as joint holder will treat the other siblings fairly. Many also have the common misbelief that that having a will allows one to avoid the probate process. Accordingly, many believe they are making the best decision by having a will that divides everything equally, and trust the surviving joint account holder to divide the money as outlined in the will.

At times, this process is successful. On other occasions, a sibling or relative may question whether the surviving joint account holder is the owner of those funds or whether the account was set up for convenience of distribution. If there are no court documents to available determine the answer, the heirs may seek an attorney and utilize litigation as recourse. Litigation among families, particularly after the death of a loved one, can be emotionally taxing and can cause permanent divisions among family members.

Both Minnesota statute and a decision by the Minnesota Supreme Court provide protections for individuals who hold property in joint tenancy, insuring that their wishes will be honored when they set up a joint account naming their intended beneficiary. In 2011, the Minnesota Supreme Court ruled that any challenge to the designation of a beneficiary requires not only clear and

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convincing evidence to the contrary, but must also specifically refer to the account at issue. (*In re the Estate of Patrick W. Butler*, A09-1208, \_\_\_ N.W.2d \_\_\_ (Minn. 2011)) Additionally, Minn. Stat. §524.6-204(a) makes it clear that if a will makes specific reference to a joint account, the account will be divided according to terms of the will and will not be given to the joint account holder.

For those who are considering estate planning, it is important to understand both the benefits, and the potential consequences of holding property in joint tenancy. Joint tenancy may help avoid probate, attorney's fees, and estate tax. However, if the individual also has a will, the probate process is not entirely avoided. Additionally, if there is dispute over the distribution of the property, this could lead to costly and emotionally charged litigation. If one chooses to hold their property in joint tenancy with one of their children, it is vital that the intended beneficiaries be named in their will as to avoid unnecessary controversy and divide amongst their family.

The complexity of these permutations mandates the use of an attorney to prepare a proper estate plan. Joint tenancy is often party of such a plan.