

Are You Sure Your Estate Plan Is In Order?

HOPING TO AVOID PROBATE

The Risks of Joint Ownership





Good Intent, Bad Consequences

After Sally's husband John passed away, she began thinking hard about her own estate plan. One thing she wanted to avoid at all costs was having her estate and kids end up in probate court. As a way of ensuring this wouldn't happen, Sally decided to make her kids joint owners of her home and all bank and investment accounts. Her thought was, "When I pass away, my kids are joint owners, therefore there'll be no need for probate. While this certainly is true, she didn't plan for the unintended consequences this move would ultimately cause.

Two years after making her children joint owners on her accounts her daughter was in an at fault traffic accident, severely injuring her and two other people. After being hospitalized and unable to work for several months, Sally's daughter began falling behind on her financial obligations. The hospital eventually sent Sally's daughter to collections for the unpaid medical bills. To make matters worse, the others injured in the accident filed a lawsuit against Sally's daughter and won a judgment that exceeded the limits of her auto insurance policy.

Because Sally's daughter was a co-owner on Sally's bank accounts, investments and other assets, a large percentage of Sally's savings were taken as a result of the judgment, as they were no longer just hers, but now also belonged to her daughter as a result of her status as co-owner.

Seven Inherent Risks of Joint Ownership

Unfortunately, Sally's situation isn't that uncommon. Many people set up joint accounts without understanding the risks involved. Below are seven financial risks to consider before proceeding with a joint ownership arrangement:

- 1. Lawsuits & Judgements** *Any lawsuit or judgment filed against a joint owner could put the account(s) and/or property at risk as it will be counted among the assets owned by the child involved in the lawsuit.*
- 2. Bankruptcy** *Any joint owner who files bankruptcy puts your account(s) and/or property at risk of being taken, as they will be counted among the assets owned by the child going through bankruptcy. Assets that the creditors will be fighting for to settle any outstanding obligations.*
- 3. Incapacity** *Any joint owner who becomes incapacitated could place your account(s) or property at risk as losing a job, and their income, while at the same time juggling excessive medical bills could quickly become too much financially.*
- 4. Divorce** *Any joint owner who ends up in divorce proceedings could place your account(s) or property at risk as they will have to report any assets they have an ownership interest in. This could result in your assets being given to a child's ex-spouse.*
- 5. Theft** *While no one thinks it would happen to them, the facts are the facts. Many retirees have been taken advantage of as making children or anyone for that matter a joint owner on your accounts gives them the ability to spend, withdraw, or take loans against your accounts. All without the need for your approval.*
- 6. Loss of Independence** *Any actions you may want to take, such as refinancing, selling, or taking out a second mortgage against real estate owned jointly requires the approval and signature of all joint owners, meaning you now have to gain the approval of all joint owners.*
- 7. Family Disputes** *When siblings are made joint owners they are legally entitled to the account or property, even though you may have promised your kids something different. Just because you tell them one thing doesn't mean they will follow through with your wishes after you're gone. This often happens when you make the "responsible child" the joint owner and instruct them how to divide the assets when you're gone. In many cases, the "responsible child" may decide to tie up the account, dragging their feet on dividing up among the other siblings, causing in many cases permanent divisions in the family.*

WHAT YOU NEED TO KNOW ABOUT JOINT OWNED ACCOUNTS AND PROPERTY

Your Will Is Secondary To Account Titling

For example, if Sally had four children and her will stated that she wanted her account to be split up evenly between her children upon her death, this unfortunately may not happen as she wanted if she had put only one child as the joint owner on the account prior to her death. The legal title of the account would mean that it would pass to the one child who had been designated as joint owner and not pass through the will at all. As a result the child who received the account as joint owner would not have to distribute the money to the other children according to the will, unless he or she felt morally obligated to do so.

The verbiage used in vesting for tenancy designation on a deed determines how the tenancy of the property is held and how the distribution will occur upon death of a vestee.

Two frequently used tenancy designations are:

1. Tenants in common, and
2. Not as tenants in common but with rights of survivorship

Tenants in common hold the estate as separate owners. So, for example, if Sally and her daughter own property as tenants in common they each own a separate fifty percent interest in the property. If Sally dies, her fifty percent does not go to her daughter; it goes to her heirs. This type of vesting works well with nonrelated owners and business arrangements where separate ownership is desired.

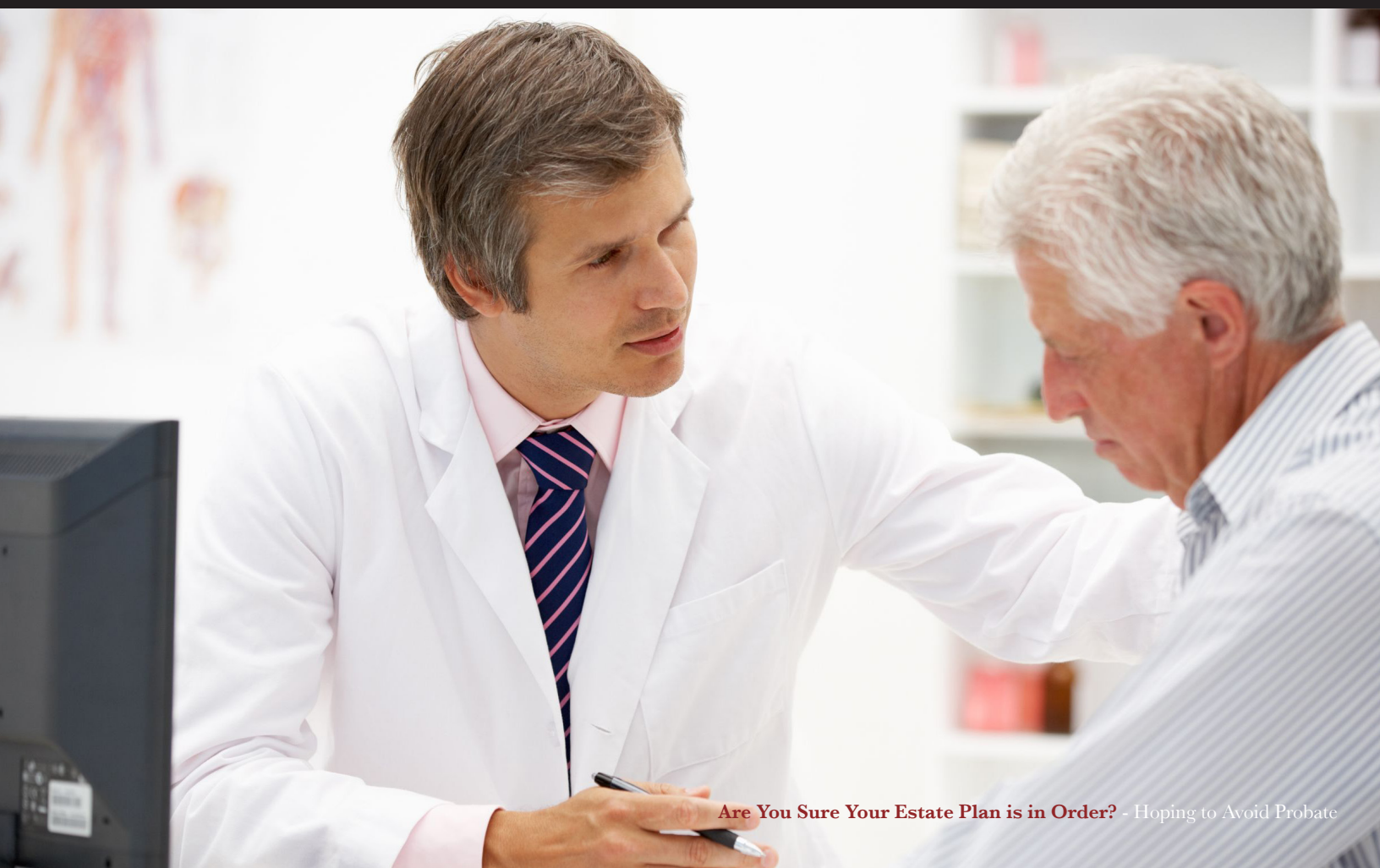
However, if the property was owned by Sally and her daughter, not as tenants in common, but with rights of survivorship, then upon Sally's death, the property would vest solely to her daughter. This vesting works well with related (non-spousal) or nonrelated parties that want the property to vest directly to the other owner upon the death of the other.

Planning Tip: Be careful with joint ownership of real estate as this could carry an increased capital gains tax when the property is sold due to the loss of the "stepped-up basis."

Medicaid Eligibility Can Be Impacted

When an elderly relative needs to move into a nursing home it can be a stressful time. Nursing home care is expensive and many families don't have the additional income or means to pay for it. To qualify for Medicaid, stringent medical and financial requirements must be met. Care must be taken when dealing with the assets of a Medicaid applicant, and gifts of assets **for the last five years** must be reported as part of the application process. Dealing with real estate and other assets of the Medicaid applicant by using joint tenancy or gifting may disqualify a person, so talking to a Medicaid planning attorney is vital to ensure you correctly spend down assets.

So, how can you accomplish what Sally set out to do, namely, avoid probate, while at the same time not expose your assets to unnecessary risk of liability? Two means exist to deliver similar results and avoid many of the pitfalls of joint ownership.



TOD and POD: Two Good Alternatives

TOD and POD are two ways to avoid probate without the complexities of joint ownership.

1. Transfer on Death (TOD) Registration: If your stocks, bonds, mutual funds, and in some states, other assets like cars and real estate, have the TOD provision, you can assign a beneficiary to the account, which will transfer the asset directly to the beneficiary upon the death of the account holder while bypassing probate.

2. Payable on Death (POD) Registration: (a.k.a. “Totten trust”): If you have checking and savings accounts, savings bonds or security deposits, you can have them set up as POD accounts with the issuing bank or credit union. This will allow the account(s) to immediately be transferred to the named beneficiary upon the death of the account holder again bypassing probate.

In both cases your assets are never at risk of lawsuit or judgment of a beneficiary as they legally do not own any percentage of the assets until your death.



In Conclusion

Joint ownership can be an enticing scenario for many people. It's easy to set up and costs much less than going through probate. But there are many inherent risks with joint ownership that can undermine the best of plans. Think carefully and explore all the potential options before entering into any joint ownership arrangement. Work with an experienced estate planning expert to ensure that you achieve your desired outcomes, without unexpected consequences.

We're Here to Help

To schedule a free strategy session with our firm to discuss your estate planning goals and or concerns, simply choose the time that works best for you by clicking on our calendar to the right. Or if you'd prefer, you may simply call or email our office and we'd be happy to schedule a time to visit with you. Either way, we look forward to hearing from you soon.



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