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Joint Ownership - A Cure Often Worse Than The Disease!

By Wayne Eig

Some clients, especially unmarried individuals, try to avoid probate and even try to concoct an entire estate plan by "strategically" placing assets in joint names with intended beneficiaries. Using joint ownership in this manner, generally, is a dangerous way to avoid probate and provide for beneficiaries. In this blog we highlight four commonly encountered pitfalls of relying on joint ownership. A second blog, coming shortly, will provide suggestions as to how to address these goals more effectively.

(1) Owning different accounts jointly with different beneficiaries – A parent with three children establishes three separate joint accounts, one with each child, with the goal of providing each such child with an equal share of the estate. This "simple" strategy will not work as intended unless all three accounts are equally valued at the time of the parent's death. As the value of assets changes, the value of each child's intended share will also change, undermining the goal of providing equally for each child. Similarly, withdrawing or distributing from one or more accounts will also threaten the goal. The strategy requires constant vigilance. Even under the best of circumstances, the parent is unlikely to attend adequately to the three accounts. Add to the equation dementia or poor health and this "simple" strategy is likely to fail. Separate joint accounts for each child is certainly not the simple and easy plan intended.

(2) A single account creates different problems – To avoid the extensive monitoring and adjustments inherent in multiple accounts for different beneficiaries, some clients open a single joint account naming one child as the joint owner, trusting that that the child will then divide the property with siblings or others. Parents are often "certain" that the child will take care of the other intended beneficiaries. Unfortunately, this approach often creates a legacy of sibling strife, resentment of parents, and unintended consequences. The surviving joint owner is tasked with carrying out the parent's goals but human nature and personal, family or other pressures may make implementing the goal difficult or even impossible. The financial needs of one child (including that child's spouse or children) may differ from those of another child. These pressures may increase marital strife or aggravate family differences. The surviving account owner may be influenced by spouses or children to divert the funds to purposes not consistent with the parent's initial goal. Maryland law clearly provides that the other intended beneficiaries have no right to the property if the surviving owner does not honor the plan. Furthermore, the property owned by the surviving owner is subject to the claims of his or her creditors of that child and may be attached or otherwise encumbered before it is divided. Finally, any transfers by the surviving account owner to the other intended beneficiaries can create taxable gifts. In short, for family, emotional and tax reasons, this plan can be disastrous.

(3) Unexpected gift and income tax consequences – The creation of joint property, depending on the nature of the asset, may result in an immediate taxable gift, and may also have unexpected and complex future income and gift tax consequences. Future transactions involving the jointly-held assets may also have unexpected gift and income tax consequences.

(4) Lack of flexibility over joint accounts – Once property is jointly titled, it becomes difficult, if not impossible, to change the planning without the consent of all of the joint owners. Often over time, issues develop between co-owners. This lack of flexibility may create unnecessary costs and troubles for the parent establishing joint ownership.

BUT OTHER SOLUTIONS ARE AVAILABLE. A subsequent blog will suggest these alternatives.

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