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JOINT OWNERSHIP OF PERSONAL PROPERTY AND ITS EFFECT ON YOUR ESTATE

The term "Joint Tenancy With Rights of Survivorship" is most commonly associated with real estate transactions. Usually when real property is owned by two or more persons, (most commonly spouses), Joint Tenancy is preferred because when the real property is owned in this manner, upon the death of one joint holder, the other joint holder(s) become the owner(s) of the entire property. As an example, when husband and wife own real property jointly and one spouse dies, the other has immediate ownership of the entire parcel. Owning the property in this manner is especially helpful when the estate is administrated.

Owning personal property in this fashion can be an entirely different issue and one that more commonly creates significant issues when it comes to estate planning. The biggest issue with owning tangible personal property jointly is that usually the property is not held between spouses, but rather, among different family members or even persons not related at all. In this scenario, the "desires" of each joint holder must be considered before the property can be transferred. From an estate planning perspective, this can be a nightmare.

By example, lets say you and your friend are car enthusiasts and you purchase a vintage automobile of significant value, and hold title jointly. In this fashion, when one of you dies, the other will own the vehicle solely and will acquire all of the value as well; an even greater benefit if the vehicle increases in value over the years.

As time moves on, you decide that upon your death, you want to hand down your interest in the vehicle to your son, who also loves vintage automobiles. Or, perhaps you want to rid yourself of the automobile to lower the value of your estate upon death for estate tax savings. In either scenario, you can't, unless the other owner agrees to change the type of ownership, and that might be impossible. He certainly knows the value he would lose if he survives you.

So what are your options? Obviously, you should always deeply consider the ownership type options before you acquire the property. If you failed in that regard, and the other party agrees, change the ownership to a different tenancy. Failing these options, you can place the property in a variety of Trust instruments such as a Charitable Trust, a Retained Interest Trust, or a Lead Trust. You can also create a Limited Liability Company, or a Family Limited Partnership that can assume ownership. Many of these instruments will allow you to continue to enjoy the property during your lifetime and avoid ownership issues upon death.

The issues outlined above are common in estate planning, but are too often not considered until it's too late. When dealing with significant assets of real or tangible property, not owned between spouses, it can very quickly become an estate planning nightmare. If you are experiencing this issue currently, you should consider your options now.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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