Effects of Title Ownership on Property

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Until substantial amounts of property are acquired, few focus on estate planning. However, the method by which titles are held to land, livestock, machinery and other property can have important estate planning implications. When, late in life, it is decided to plan an estate, making changes in title ownership can create problems such as gift taxes.

Deciding on ownership is generally based on the following five factors: Preference as to sole ownership or co-ownership (joint tenancy and tenancy in common); desired disposition of property at death; estate and inheritance tax effects; gift tax implications; and differences in estate settlement costs. This document will look at real and personal property and two types of co-ownership: Joint tenancy and tenancy in common.

Types of Property
There are two types of property, real and personal.

Real property is land and anything that is constructed on it, grown on it or affixed to it. On a ranch or farm the fences, barns and out buildings, water systems that cannot be moved, and growing timber are real property.

Personal property means property that is movable. There are two types of personal property – tangible and intangible. Personal property that can be felt or touched is tangible (livestock, machinery, vehicles, jewelry, a spur collection, stored grain). That which is unable to be touched or felt is intangible personal property (stock certificates, bonds, promissory notes).

Title and or physical possession is the manner in which both real and personal property is owned. Title may come in the form of deed, certificate, bill of sale, contract or some other document. These pieces of paper designating title are important designations that cannot be separated from a will.

Forms of Property Ownership
Sole ownership of property is the simplest and gives the holder the most complete ownership possible. When the property is transferred, there is a minimum of red tape since the titleholder has the right to dispose of the property. During the titleholder's life there are laws of the state that dictate how the property is to be managed. You cannot infringe on the rights of a neighbor, zoning restrictions dictate whether an agriculture operation is allowed in certain areas, and you cannot disregard the interest rights of a surviving spouse. Wyoming is a common law state and thus protects spouses and keeps them from being left out in the cold when the other spouse dies. Each spouse, under law, has a legal right to a portion of the other's property at death.

At death, solely owned property passes under a will or according to state law if there is no will. Estate taxes may reach the total value of the property when it is held in sole ownership. Sole ownership property usually goes through probate to clear title for heirs.

Savings and checking accounts are typically closed as soon as possible after the decedent's death and a personal representative is appointed. The personal representative then moves the balance of all accounts to a new account, opened in the name of the estate. The personal representative pays outstanding bills and distributes the remaining money to the heirs. The process can take a very long time, sometimes years.

Co-Ownership Types
Joint tenancy and tenancy in common are the two most common forms of co-ownership. Co-

ownership exists when two or more persons hold legal title to undivided ownership of property.

Joint Tenancy

Joint tenancy with right of survivorship is a popular co-ownership method of owning property. There is a belief by many that joint tenancy substitutes for a will, saves death taxes and can reduce estate settlements costs. In general, the larger the estate the less desirable or advisable joint tenancy becomes because of the death tax "traps" that can arise. A joint tenant cannot leave his or her interest to someone in a written will as joint tenancy title takes precedence. Neither does his interest pass to his heirs by intestacy. Joint tenancy title is proof of a contract, and by law it has priority.

When a couple marries, they sometimes place their real and personal property in joint tenancy. Perhaps it is to show each other that they now trust enough to share their property. The decision to do so should only be taken after very serious consideration. A joint tenancy bank account is advisable for spouses. Banks have a standard form for checking, savings and certificates of deposits to be owned in joint tenancy.

When a joint tenant dies, his or her economic interest passes automatically to any surviving tenant(s). The following example shows how this can cause an unexpected disinheritance. A father and son have held farm property in joint tenancy for two decades, each expecting the father to die first, leaving the son to inherit the total farm. As it happened the son had a fatal tractor accident. His share of the joint tenancy interest in the farm went to the father. This, in essence, jerked the rug out from under the son's wife and children's future. They must depend upon the goodwill of the son's father for their economic survival.

There can be problems with personal property placed in joint tenancy. For example, should an elderly person living alone place a checking account in joint tenancy with a trusted friend who does her shopping and performs other tasks, then dies unexpectedly, the entire amount goes to the trusted friend. Those who would have inherited the money in the checking account as the deceased might have intended, now are ineligible to receive the money.

A gift tax problem arises when there is a death of one joint tenant and the other joint tenant moves the property to some other ownership pattern such as tenancy in common. A liability also arises when one of the joint tenants put more money into the business than the other. Upon the death of the one who has contributed all or most to the joint tenancy, there is a gift created when the surviving joint tenant inherits all the property.

Tenancy in Common

Tenancy in common is any property held in shared ownership that is not in another type of ownership. All shared property not owned in joint tenancy, partnership, corporation, or LLC is tenancy in common. You can own any percentage of tenancy in a common law state such as Wyoming.

The major difference between joint tenancy and tenancy in common is in the disposition of the interest of a deceased co-owner. Another difference is that the owner's shares do not have to be equal. At the death of a co-owner that person's undivided interest passes to that individual's heirs either by a will or by law. There is no right of survivorship for the tenant in common. Each tenant in common has the right to sell, give away or transfer his or her proportional share.

In the joint tenancy example had the father and son owned the property as tenants in common, when the son died his share would have gone to his wife and children either by will or by law.

If you are in a corporation, partnership, or LLC don't delay in checking your documents to see what share of the business you own.

Disclaimer

This manual is not intended to be a substitute for legal advice. It is designed to help you become familiar with some of the tools available in planning an estate and the need to do such planning. Laws change when the Wyoming legislature meets and votes to change a section of the law. This publication is based on laws as they exist at the time of printing.