

The “Daily Plan-It™”

ESTATE & BUSINESS LAW GROUP, P.C.

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- Client Version -

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What Clients Need to Know About Joint Tenancy Ownership

When most of our clients bought their first home, they probably signed a deed as a joint tenant next to their spouse’s signature. That’s the way their parents and grandparents did it, and the real estate agent told them that doing so would protect the surviving spouse from probate court after one of them dies.

It’s not unusual for the surviving spouse to assume that, because joint tenancy worked to avoid probate the first time, it will work just as well a second time. In thinking this way, the surviving spouse decides to add an adult child to the deed.

But there’s a trap in joint ownership with a child that many clients might not know.

Dad’s Dutiful Daughter

Here’s a hypothetical to consider:

Five years ago, Edward became a widower and sole owner of a home and three rental properties he bought with his wife. Edward has two adult daughters, Gwen and Stacy. Stacy has three minor children.

Edward is disabled. Gwen visits daily to do light housekeeping, and she also processes his bills and the bookkeeping for the rental properties. Edward assigns her as joint tenant on deeds to his home and co-owner of the rental properties. Stacy lives in another state and isn’t involved in the upkeep of the properties.

Edward’s will indicates that he wants both daughters to benefit equally from his estate, and for a portion of its value to be set aside for his grandchildren. Despite this, Gwen will legally own the properties upon his death. The joint tenancy can cause Edward’s other daughter and grandchildren to be unintentionally disinherited.

Disaster Strikes, Estate Targeted

However, while Edward is still alive, Gwen causes an automobile accident. She is unable to pay her medical bills and her debt goes into collections. The other driver in the accident was seriously injured and sues Gwen for damages. In the midst of this lawsuit, Gwen’s husband files for divorce, seeking half of his wife’s assets.

Any property she owns, including assets she shares with her father, is in jeopardy of being seized.

The Joint Tenancy Trap

Wanting to protect his estate, Edward decides to remove Gwen from the joint tenancy and sell the properties. However, Gwen refuses, saying she deserves half of the assets as payment for her caretaking duties. Edward must seek a court order to remove her from the deeds.

Even if Gwen had never faced debt problems, a nasty divorce or lawsuits, Edward’s final wishes for his estate might still have remained in jeopardy.

As you can see from this extreme example, the downsides of joint tenancy far outweigh any upsides. I urge you to consider these risks carefully before holding property in joint tenancy with an adult child.

I hope this information helps you. As always, if you have a question or concern about a specific case or issue, please contact our office.

Workshop Schedule

The Truth about Estate Planning

Tuesday, May 5 – 7:00 pm

Tuesday, June 16 – 7:00 pm



IRA Preservation Planning

Learn how to properly protect your IRAs and what the IRA Preservation Trust can do!

Wednesday, May 13 – 7:00 pm OR at a mutually convenient date in your office – or ours – you are welcome to invite your clients!

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005 (DRA 2005), which included the most sweeping changes to Medicaid laws ever enacted.

Medicaid Planning Workshop

The new Medicaid laws and some of the planning options that are still available, even in light of these sweeping changes.

Tuesday, May 12 – 7:00 pm

Tuesday, June 23 – 7:00 pm

Registration: Contact Mary Lang at (847) 367-4460

<http://eblawgroup.com>

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We invite you also to direct your clients to http://eblawgroup.com/FAQ_medicaid.htm for more information on Medicaid Planning.