RICHMOND WEALTH MANAGEMENT

Joint tenancy with right of survivorship

Understand the potential consequences when titling your assets

How you own assets will often affect their day-to-day management as well as your ability to transfer them to the next generation. Joint tenancy with right of survivorship (JTWROS) is commonly used because it generally results in the "automatic" transfer of assets to the surviving joint tenant(s), avoiding the probate process. It's also perceived as a convenient way to give a child or friend the power to access or manage an account.*

**In Louisiana, JTWROS is not a recognized form of property ownership.*

Titling assets as JTWROS, however, may have a number of drawbacks, and at times it could end up being a frustrating roadblock to carrying out your wishes. The following points outline some common issues involved in titling assets as JTWROS and some of the possible consequences.† (Note: Unless otherwise indicated, "you" or "your" refers to the person furnishing the property, and "other joint tenant" or "surviving joint tenant" refers to the other, noncontributing joint tenant.)

Joint property passes to the surviving joint tenant regardless of your will or revocable trust.

Even if your will or trust includes contrary instructions, assets titled as JTWROS will transfer to the surviving joint tenant. As a result, by titling assets as JTWROS, you may unintentionally disinherit parties you meant to benefit, and credit shelter trusts, marital trusts, special needs trusts, or charitable gifts may not be funded as you intend.

Property owned jointly with a nonspouse may be subject to estate tax on 100% of its value at your death.

If the surviving joint tenant is not your spouse, tax law presumes that the entire value of joint property must be included in your taxable estate. Even though this property is not a part of your probate estate, it is still a part of your taxable estate for estate tax purposes to the extent of your contribution.

"Informal" plans to have the survivor divide property are not enforceable.

Family disputes often arise when one child is named as joint tenant on accounts and other children believe that the parent intended them to be beneficiaries as well. The surviving joint tenant cannot be compelled to "share" the account with others. And because these transfers are treated as gifts, problems can also arise when the surviving joint tenant wants to share the account with others. As a result, he or she may be unwilling to make gifts in excess of the $15,000 annual exclusion limit.

† This report is designed to provide introductory information regarding the subject matter covered. Neither Wells Fargo Advisors nor its Financial Advisors offer legal or tax advice. Consult your attorney or tax advisor for complete, up-to-date information concerning federal and state tax laws.

Special consideration for community property states

In some community property states, titling assets as JTWROS may sever the community property nature of the account. As a result, assets that might otherwise receive a full cost-basis step-up may receive only a 50% step-up. If you live in a community property state, contact your legal and tax advisors for advice regarding the proper titling of assets.

(Note: Some states permit "community property with rights of survivorship" [CPWROS] accounts, which are not affected by this issue.)

Jointly held accounts give the "other" joint tenant unrestricted access to your account.

In general, this means that regardless of who purchased or contributed the funds, each joint tenant has the ability to make investment decisions and to deposit, withdraw and receive payments from that account, all without notice to or consent of others interested in the account. A joint tenant is treated as an owner, not a fiduciary, so there is generally no remedy if a noncontributing joint owner "misuses" his or her power over the account.

Some institutions try to prevent this problem by requiring both parties' consent to certain transactions. This is a double-edged sword, however. Should the other joint tenant refuse consent, you may be unable to complete certain actions.

Naming a nonspouse as a JTWROS tenant on certificated securities[1] or real estate may have gift tax implications.

Sometimes naming someone other than your spouse to the title of property results in making a gift. For example, if you add your child as a joint owner on real property (a home) or certificated securities, this act may—depending on the value—be considered a taxable gift. If so, you could be required to file a gift tax return and use all or a portion of your $11,400,000 (2019) lifetime gift exclusion, or even pay gift taxes.

Property held as JTWROS may require both tenants to authorize the sale of assets.

When you wish to sell an asset such as real estate or certificated securities held as JTWROS, you may be required to get the other joint owner's authorization to do so. This can be particularly difficult if one joint owner becomes incapacitated and the other joint owner needs to sell assets to meet living or health-care expenses.

Assets held as JTWROS between spouses will receive only one-half step-up in basis when the first spouse dies.

In general, property you own receives a step-up in cost basis at your death. In other words, if you own property in single name, upon your death the individual who inherits the property gets a new cost basis determined by the property's fair market value on the day you die (or in rare cases a date six months later).[2] This step-up can be valuable in reducing capital-gains taxes when the beneficiary sells the property.

However, a special rule applies when property is held as JTWROS with your spouse: Only one-half of the jointly owned asset's value is eligible for the step-up in basis, regardless of which spouse died first or which one contributed the property. As a result, additional income taxes may be owed when the property is sold.[3]

1. *In other words, securities for which you hold the certificates. This issue does not apply to securities held in street name (where a brokerage firm, such as Wells Fargo Advisors, holds the certificate for you).*
2. *This rule generally applies to property held in single name, or as JTWROS with a nonspouse when you contributed all the property and are the first to die.*
3. *If the joint account was created before 1977, there may be a full step-up. Your tax advisor should refer to* Gallenstein v. United States *(1992 CA6, 70 AFTR 2d 92-5683, 975 F2d 286) for more information.*

Jointly held property could be subject to claims against any joint tenant.

JTWROS property may be subject to claims made by creditors, lawsuits and divorce settlements of any joint tenant. For example, if you title assets jointly with your child, the child's creditors could attempt to reach jointly held assets to satisfy debts or judgements.

You can count on us

For estate planning purposes, having your assets properly titled is essential to help reduce estate taxes and ensure assets are transferred to your beneficiaries according to your wishes. Ask your Wells Fargo Advisors Financial Advisor for information to help you start organizing your financial information and identifying your estate planning objectives. Together with your legal and tax advisors, your Financial Advisor can help you review and, if necessary, change how your assets are registered, to help you meet your estate planning goals.

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