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Is Joint Tenancy Wasting Your Money?

Holding property in joint tenancy is a popular ownership choice, but often with its own trappings. Joint tenancy, although simple in concept, can present some unwanted and unexpected tax and estate planning results.

1. Joint Tenancy Causes Double Taxation.

If joint tenancy is held between non-spouses, double taxation on the entire joint tenancy property can result. Upon the death of the first tenant, the entire property is subject to estate tax. Then, upon the survivor's death, the entire property is taxed again in the survivor's estate.

2. Joint Tenancy Loses "Stepped-Up" Basis.

When a person passes away, his or her assets are entitled to a "stepped-up" basis - that is, the income tax basis for the entire asset is adjusted to the fair market value (FMV) of the asset as of date of death. As a result of the stepped-basis, it is possible for appreciation to escape income taxation forever - a very nice income tax benefit. By titling property in joint tenancy, the stepped-up basis is lost on the portion given to the joint tenant. Therefore, the surviving joint tenant pays greater income tax upon sale of the asset than he or she would have if the asset were not placed in joint tenancy.

3. Joint Tenancy Exposes All Owners to Creditors of Any Tenant.

All joint tenancy owners are vulnerable to all creditors of any of the joint tenants. The claimants can include bankruptcy creditors, as well as divorcing spouses.

4. Joint Tenancy Creates Gift Tax Consequences.

Oftentimes, a parent places assets in joint tenancy with a child, with the intent that the child assist the parent in money management. Upon the parent's passing, however, the right of survivorship feature causes the child to own the account outright. If the child wishes to "do the right thing" and distribute the account among siblings, the child could face gift tax consequences because the "corrective" transfers to the siblings are considered gifts under the law.

5. Joint Tenancy Causes A Conservatorship.

Joint tenancy ignores incapacity planning. If an owner becomes unable to manage his or her own affairs, a costly and burdensome conservatorship will be required unless the tenant has a valid durable power of attorney for asset management.

6. Other Costly Problems.

Besides the above, by adding a joint tenant, the original owner loses exclusive control over the property. In addition, joint tenancy distributes property to the surviving tenant without offset for estate taxes and expenses, thereby unfairly burdening the other estate beneficiaries with the surviving tenant's share of estate costs. Furthermore, if no other joint