JOINT OWNERSHIP...IT'S NOT AN ESTATE PLAN SUBSTITUTE

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Today many individuals are informed enough to know that probate is the last thing they want their loved ones to deal with at death. Unfortunately, with a will, that is exactly what your loved ones get....Probate!

As individuals seek out ways to avoid probate, they often seek simple, less expensive alternatives. Unfortunately, the alternatives they find tend to create more problems than they solve. One perceived estate planning alternative is joint ownership. When people are asked why they think joint ownership is such a great idea, the typical response is that it allows them to avoid probate. As it turns out, this is only partially true. When one of the joint owners dies, the surviving owner immediately acquires sole ownership of the asset. There is no probate at the first death. However, when the surviving owner dies, the individually owned asset must now pass through probate. Joint ownership may avoid probate at the first death, but ultimately if the surviving owner becomes the sole owner of the asset, it will eventually find its way to the Probate Court.

LOSS OF CONTROL

What many joint owners do not realize is that when assets are owned as joint owners, there is a potential loss of control. For example, if a parent puts his name and two of his children's names on his brokerage account, the company may require all three signatures to close the account, cash in the investments, or to transact business of any kind on that account. This can create an inconvenience to the original owner and cause a loss of control.

Take the same situation with the client and instead of putting the two children's names on the account, let us assume that the client put his new spouse's name on the account. By doing this, the client has potentially disinherited his two children. You ask how? If the client predeceases his spouse, she will receive all of the money in the joint account by virtue of "rights of survivorship." By law, the spouse has the right to use the funds in any way that she sees fit. What if the deceased husband's children are not her own children? It is unlikely that the spouse will pass the money to her step-children at her death. Instead, she will likely pass it on to her own children or family. When you hold assets in joint ownership, you give up the right to determine where, how and when those assets will be distributed at your death. Why is this? Because all jointly owned assets pass automatically to the survivor. In other words...Survivor takes all.

JOINT OWNER LIABILITY

Often, a widowed or aging adult will make a family member or friend a joint owner on various assets. Many times this is done with the idea that the friend or family member will be able to access the money in the event that the original owner is ill, incapacitated or unavailable. The problem with owning assets jointly with a non-spouse is that you potentially take on that joint owner's personal liabilities. If your joint owner gets sued, goes through a divorce, or files bankruptcy a portion of those assets may be lost to the other joint owner's creditors. Most parents add a joint owner's name to their account for convenience or to avoid probate, when in fact the parent may be creating more problems for themselves than they anticipated. Typically, most parents who place the child's name on the account do not intend for that child or that child's creditors to take a portion of the assets out of the account, but with joint ownership there is always that potential risk.

TAX LIABILITY

Many individuals with large investment accounts will place a child or family member's name on the account with the hopes that at the time of death, that only one-half of the account will be attributed to his or her estate for estate tax purposes. However, when an individual owns money jointly with a non-spouse and that individual dies, the IRS will attribute the entire value of the account to the original owner unless the other joint owner can prove contribution to the account.

Additionally, the assets that the original owner placed in joint ownership with the child or family member could result in a gift tax problem. For example, if a mother makes her daughter a joint owner on a five hundred thousand dollar investment account, the mother could potentially owe gift taxes on one-half the value of that account the minute her daughter's name is added to the paperwork. Making a child or a family member a joint owner of your existing account will not reduce the size of your estate, and it may create potential gift tax and capital gain tax problems down the road.

In each of these situations, the individual creating the joint ownership has tried to do the right thing. They have tried to avoid probate and avoid estate taxes at the time of death. However, along the way they have created other problems such as loss of control, added liability of the joint owner, and potential estate and gift tax problems. What everyone needs to realize is that all of these goals can be accomplished with the preparation of a Living Trust. A Living Trust allows the individual to transfer the assets to the family members at death without Probate Court involvement; it allows the individual to retain control during his or her lifetime; it can appoint someone you trust to manage your assets in the event of incapacity; and it avoids the potential gift tax and capital gain tax problems.