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Planning for “*What If...?*”

Tools for Protecting Your Family and Managing Your Assets

Forms of Property Ownership

What Is It? Different ways of owning or holding title to property, e.g., as a sole owner, tenant in common, or joint tenant. Property can be owned in various ways that have differing legal consequences. For some assets, the way in which title (ownership) is held is registered with an entity. Cars, for example, are registered with the Secretary of State who then issues a “Car Title” showing who owns the car under what form of ownership; deeds showing the forms of ownership for houses are registered with the County Recorder. Other examples include bank accounts, stocks, and savings bonds.

How the property is titled, and what instructions might be left with the custodian of the property (e.g., POD – a bank is instructed to pay a Certificate of Deposit to X upon the death of the owner), is important in determining who receives the property at the owner’s death. Usually when the decedent was the sole owner, the property will pass to those specified in the decedent’s Will. Property owned in other ways may pass to others independently of the Will. Also, some ownership forms determine whether and how the joint owner can dispose of property during his/her lifetime.

Terms to Know

Sole ownership: owned by a single individual, who has all rights to transfer the property during life or at death to whomever he/she chooses.

Joint tenancy with right of survivorship (JTWROS): at death, the decedent's share passes automatically to the other joint owner(s). If the joint owners are not spouses, a part owner can dispose of his/her share during his/her lifetime.

Tenancy by the entirety: only used for spouses who are co-owners. At death, the decedent's share passes automatically to the other spouse.

Tenancy in common: any part owner can dispose of his/her fractional share of the property during lifetime or at death.

Community property: used only between spouses and only in certain states. Illinois is not a community property state.

POD (payable on death): the custodian of an asset is instructed to pay the asset to a named individual upon the death of the owner.

Issues and Limitations

- If the form of ownership dictates to whom the property will pass at death, that authority supersedes instructions in a will.
- Your spouse may predecease you, leaving you as sole owner. Or you may die at the same time. In either case, the usefulness of joint ownership in determining who will receive your property is limited.
- Naming adult children as a joint tenant on your property may or may not be a good idea. It may be a taxable gift when you add the child's name to the title. You give up exclusive control of the property. And you may place that property at risk of falling into the hands of unintended persons, e.g., creditors of your children.

Ask Yourself

How are each of my assets or each piece of property titled?

How does the titling of my assets fit into my overall plan for how my property will be distributed at death?

If property is owned as joint tenants with rights of survivorship with a spouse, have we planned for how that property will be distributed at the death of the second spouse?



<http://www.ace.uiuc.edu/cfe/whatif/index.html>

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