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BAD JOINTS

Jointly-held assets, including “J.T.W.R.O.S.” accounts, can be *Cinderella* during life but *Fatal Attraction* upon death, the legal equivalent of boiled bunnies and bleeding in the bathtub.

Joint ownership looks good when everyone’s alive; we agree. But afterward — midnight in Cinderella Standard Time — the trouble frequently begins. Jointly-held property can trigger unfair tax burdens, assets going to unintended hands, family tension, and unnecessary legal fees. And all of this can be avoided.

Why does this happen? When an owner of particular joint assets dies, there’s an automatic “slide” of those assets to the other owner or owners. Nothing has to be signed; at the moment of death, the other owner (or owners) of “JTWROS” property get 100% ownership, immediately and automatically, survivor-gets-all.

And when this happens within a family, everyone else gets nothing, except their share of the estate tax bill on those joint assets they didn’t receive.

Can’t the others just be given their share? Nope. No state law, no Internal Revenue Code provision allows those assets to be redistributed without tax consequences to the giver.

Consider this real-life situation: Mom had a joint account with caring, convenient Child #1. Mom said that when she died, Child #1 should keep a third, Child #2 should get a third, and the last third should be held for Child #3, who had problems and thus needed supervision of his assets.

But after Mom’s death, Child #1 discovered that her transfers to the sibs would be taxable gifts of hers, and balked at paying them. Child #2 discovered he had no way to force getting his third. And Child #3 wasn’t happy at all with the prospect of some informal trust holding his third, nor the prospect of a court-supervised guardianship. It took two years to work everything out.

Another sad case: the elderly woman put all her assets in a JTWROS account with her nephew, so he could take care of her. But he died first! Now everything in that joint account had to be reported on his estate tax return, unless we could prove that the money wasn’t his. Doing so meant dredging up 20-year old bank records and a bunch of affidavits.

You ask: how can something that looks so simple cause such problems? Well, jointly-held assets are never, ever simple upon death.

Consider this riddle (and we’ll send you a buck if you tell us you got it right): An asset is owned by “Franny and Zooley.” Zooley dies. Who gets Zooley’s share?

- If that asset is real estate, Franny *doesn’t*; Zooley’s heirs get the land.
- If that asset is an account, Franny *does*; Zooley’s heirs get nothing.

Clear as mud, right? Well, the law says it’s one rule for jointly-held real estate, and a different rule for joint bank and brokerage accounts.





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And those rules change from state to state. So the slide of joint property in Georgia is not necessarily the same as the slide in Florida. There's also no single way to own things jointly. Franny and Zooney's wanting something held jointly could be:

- “Franny and Zooney as **Tenants in Common**” which is different from
- “Franny and Zooney as **Tenants by the Entirety**” which has a different effect than
- “Franny and Zooney as **Joint Tenants**,” a variation of
- “Franny and Zooney as **Joint Tenants with Right of Survivorship**.”

They might even end up with plain “Franny and Zooney” with no other words in the title, too. And each of these five designations has a different consequence when the co-owner dies, or when a co-owner's creditor comes around.

Wait, what's this about a creditor of a co-owner? Well, if there's a jointly-held asset with the co-owner's name on it, then his or her creditors can reach all the assets held in joint name.

Now with all these issues, why is joint title recommended so much? Well, it's easy to put assets in joint name; it's a simple form without any other paperwork. It's also easy at a real estate closing when the lender wants the security of both owners' signatures.

So how do you get the protection, plus the convenience of joint ownership, without heirs having to clean up a mess, and without your sacrificing tax benefits, and without creditors having open season on the jointly-held assets?

First, keep a joint bank account if you wish, but minimize what's in it. Keep enough in it to meet current needs; then put the balance into non-joint accounts until you need it. This gives you the convenience of a joint account, while minimizing the potential damage.

Second, use a Revocable Trust (sometimes called a “Living Trust”) with family members as co trustees with you. You can name anyone you want to have access as a co-trustee. The co-trustee never gets any ownership, and the trust can make its assets go wherever you want upon death, same as in a Will.

Want asset protection, too? Use a Family Limited Liability Company. Having a “Co-Manager” on your accounts and assets with you creates no ownership rights and avoids the “joint” problems. (By the way, both the revocable trust and the Family LLC work across state lines. Thus, a “helping relative” can be in one state while the “helped relative” is in another, with no complications at all.)

Finally, if you hold property with someone else — whether real estate, stock certificates, or you-name-it — check out now what the “joint” words mean on the stock certificate, the account, the deed. You can fix things now much easier than trying to undo the damage later.

In short: take the time now to make sure that you and yours will live happily, jointly ever after... just like Cinderella and the Prince.