This clearly is an area where you should not rely upon advice of persons not fully aware of your assets and not fully aware of the law. No matter how well-intentioned, improper advice can be very costly indeed.

The Role of the Elder Law Attorney

Planing for management of assets in the event of disability, protection of life savings and planning for distribution of assets upon death are major concerns of older persons and their families. Estate planning involves not only these matters but also includes the issues of health care planning, retirement questions and other special legal matters associated with aging. The Elder Law attorney is particularly sensitive to the special needs of the older client and will be able to respond to these needs with advice and suggestions designed to protect assets and assure personal choice.

Special thanks for contributions to the development of this brochure:
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About the National Academy of Elder Law Attorneys (NAELA)

NAELA, founded in 1987, is a national association of Elder Law Attorneys devoted to the education and training of attorneys who can meet the needs of seniors and people with disabilities, and who advocate for the needs of such individuals.

While NAELA Elder Law attorneys work one-on-one with clients in their local areas, NAELA also examines and advocates on national public policy issues facing seniors in America including long-term health care; planning for retirement; estate planning and probate; guardianship and conservatorship; health care decision making; and elder abuse and neglect.

This informational brochure is provided as a public service and is not intended as legal advice. Such advice should be obtained from a qualified Elder Law attorney.

More information on NAELA and a directory of NAELA members in your area can be found at www.NAELA.org.

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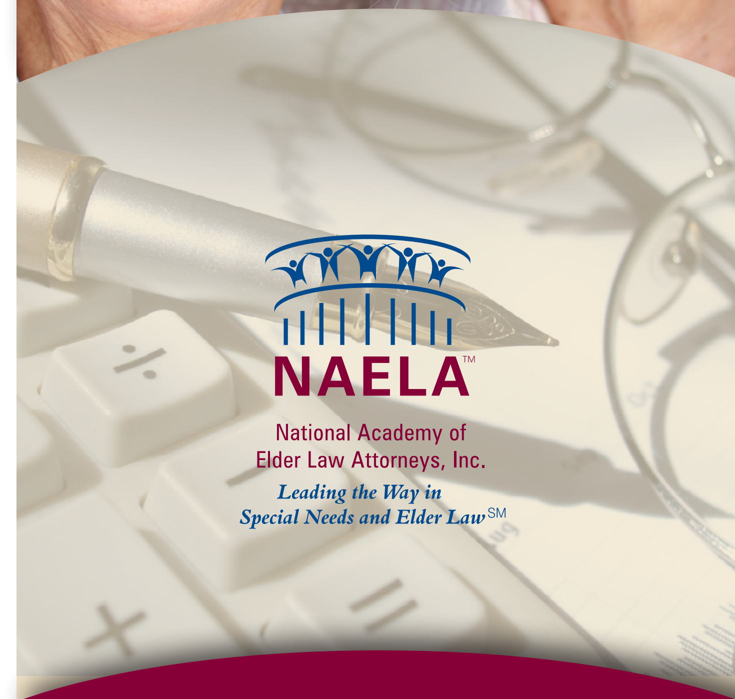
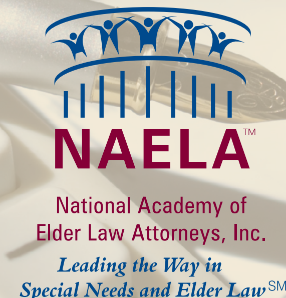
Joint Tenancy





The Law and Aging Series

The Issue

Many persons own assets with someone else. Such assets may include their home, land, cars, bank accounts, stocks, bonds, credit union accounts or any other kinds of property. Safe deposit boxes often have more than one name listed as owner.

When such assets are owned by two or more persons as "Joint Tenants with a Right of Survivorship," "Joint Tenants," "JTWROS," or simply have the word "or" between their names, some very specific legal rules apply. It is important that you understand the implications of these rules.

Often, persons will place some or all of their assets in joint tenancy to allow either named owner to be able to be a signer on the account. Older people will often do this to permit a son or daughter to take over management of assets if the parent becomes too disabled to do so himself.

The use of joint tenancies is also used as a technique to avoid probate since the surviving joint tenant automatically owns the assets at the death of the other.

Such an ownership arrangement does have benefits but there are drawbacks as well.

What You Need to Know

While ownership of assets in joint tenancy can transfer assets at death without any type of probate proceedings, this type of arrangement can cause some risk and expenses as well.

It is important to understand that the legal implications of joint tenancy are governed by state law and will vary from state to state.

In some states with community property law, property owned by spouses in joint tenancy will not receive the same tax treatment when one spouse dies. The joint tenancy property will often lose important benefits otherwise available to the survivor. The same problem may also apply to other joint tenants. This loss may be more costly than the expense of probate.

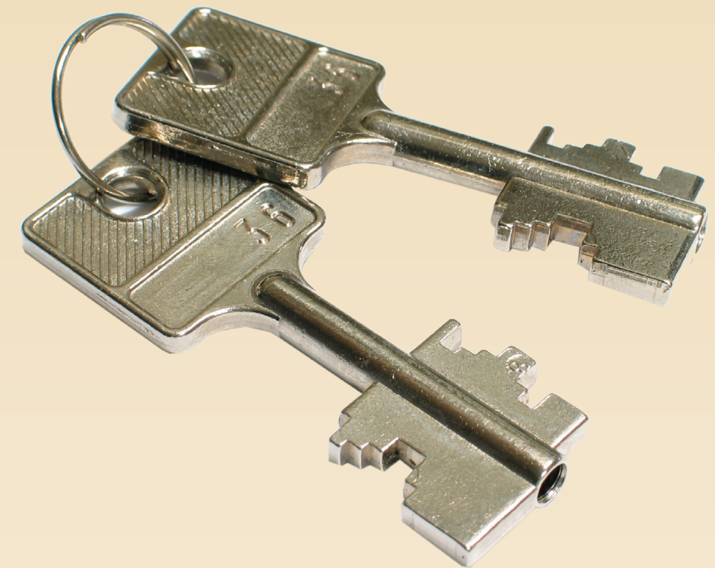
A joint tenancy asset may be vulnerable to the debts or liabilities of either of the joint tenants. Thus, if one joint tenant is responsible for damages from an automobile accident, the joint tenancy account could be at risk. The other joint tenant may have to spend money to defend his interest, even though the other owner may have contributed nothing.

Similarly, if one joint owner has a business setback, runs up large debts or goes through a divorce, there may be claims that the joint account or part of it is subject to his or her creditors. Just defending such claims can be expensive.

Finally, because jointly-owned assets transfer directly to the survivor, they are not affected by the will or trust of the owner who died. A parent may unintentionally leave all of his or her assets to a "co-signer" instead of having them equally divided among all of the children.

Where To Go For Help

People often receive conflicting advice about joint ownership of assets. Bank personnel may recommend it for the convenience of multiple signers on the account.



Real estate sellers may suggest it as a way of avoiding probate. Stock brokers may advise you that it makes transfers simpler.

Joint tenancy has important legal implications, however, and your best advisor is your attorney who is familiar with all of the assets of this type of ownership. The attorney will need to completely review your assets and your desires for their transfer on your death. The attorney will also be able to advise you as to other techniques that may be available to assure continued management of your assets in the event of disability. Such options may include durable powers of attorney or the use of trusts. The attorney, perhaps in concert with your accountant or tax advisor, can suggest a complete plan that protects your interests, carries out your wishes and saves substantial expense.