

Property Ownership Issues that Concern Married Couples

What is it?

The way that you as a married couple structure the ownership of your real or personal property is an important step in the financial planning of your future together. Whether you own a piece of real estate or a checking/savings account, the method of property ownership you choose can affect future sales of that property, divorce proceedings, or the distributions of an estate upon your death. If you live in a state that follows the traditional system of property ownership, you and your spouse can choose to either own property jointly or retain sole ownership of the property. If you and your spouse live in a community property state, both you and your spouse share equally any income earned and property that is acquired during marriage.

Caution: *If you are a same-sex married couple, property ownership issues may be more complicated if you live in a state in which your marriage is legally recognized, but own property in a state that does not recognize same-sex marriage. Consult an experienced attorney or financial professional for more information.*

Joint ownership

Joint tenancy

A joint tenancy is the ownership of property by two or more persons and where each owner enjoys the same rights in the property. Title to the property is held by the group as a whole and not by the individuals who make up the group. A joint tenancy may come with the right of survivorship, meaning that if one of the joint owners/tenants dies, all rights pass equally to the remaining joint tenants. A joint tenant can sell his or her interest, but the purchaser becomes a tenant-in-common while the other owners remain joint tenants.

Tip: *Right of survivorship is not automatic. Sometimes the right of survivorship must be explicitly stated. If you want a joint tenancy with right of survivorship, check whether it is automatic under your state's property ownership laws or whether you must explicitly state it.*

Caution: *A disadvantage of a joint tenancy is that it could result in an unintentional elimination of ownership.*

Example(s): *Jane and Hal decide to give the family summer home on Cape Cod, Massachusetts to their children Bob and Ken as joint tenants so that the home can stay in the family. Both Bob and Ken are married and have children. Ken later dies, and the property passes to Bob, the remaining joint tenant. Unfortunately, Ken's widow Sue and their child Fred end up with nothing.*

Tenancy in common

A tenancy in common is the ownership of property by two or more persons who have an undivided separate interest in the property with a common right of possession. No tenant in common owns a specific part of the property. Instead, all of the tenants in common have an interest in the entire property. Unlike a joint tenancy, there is no right of survivorship with a tenancy in common. In other words, a tenant in common can transfer his/her interest in the property to anyone upon death.

Example(s): *Jane and Hal decide to give the family summer home on Cape Cod, Massachusetts to their children Bob and Ken as tenants in common. As tenants in common, Bob and Ken have an undivided separate interest in the property with a right to possess the whole. Two years later, Ken decides to transfer his interest in the property to his son Fred. Now Bob and Fred own the summer home as tenants in common. One year later, Bob dies. In his will, Bob devises his interest in the summer home to his son Mark. Now Fred and Mark own the summer home as tenants in common.*

Tenancy by the entirety

A tenancy by the entirety is one type of the ownership of property by a husband and wife. It is similar to a joint tenancy in that both the husband and wife share the right of survivorship. However, a part interest cannot be transferred to another individual without the consent of both spouses. Like a joint tenancy, the tenancy by the entirety can result in the unintentional elimination of ownership. If one spouse dies, the property will go to the surviving spouse, regardless of the terms of the will.

Example(s): *Jane and Hal own a home as a tenancy by the entirety. Hal has a child from a former marriage, Ron. Hal indicates in his will that he wishes to leave his interest in the home he owns with Jane to Ron. When Hal dies, his interest in the home will go to Jane under the right of survivorship, not Ron, despite the terms of his will.*

Tip: *Tenancy by the entirety is not available in all states. Certain states will give the wife a life estate in any real property held at death by the husband, regardless of whether or not the husband and wife held property as tenants by the entirety.*

Sole ownership

Sole ownership is when one individual has both the legal and beneficial ownership of property. One of the major advantages of sole ownership is the ease of property transfer during one's lifetime or upon one's death.

Example(s): Hal has sole ownership of a piece of property on Cape Cod, Massachusetts. Hal's wife Jane does not have any ownership interest in the Cape Cod property. In most states, Hal can transfer his entire interest in the property at any time during his lifetime or upon his death to his son from a prior marriage, Ron.

Community property

While most states follow common law rules as to the ownership of property, nine states are community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin (in addition, Alaska has an elective community property system). If you and your spouse reside in a community property state, property that either you or your spouse acquire during the marriage is considered the property of both of you, with each of you owning an undivided one-half interest in the property. No matter which of you acquires the property, title to half the acquisition passes to the other spouse by operation of law. Any property that either of you brings into the marriage, inherits during the marriage, receives as a gift during the marriage, or together agree is separate property is considered separate property of the owner-spouse.

Example(s): Hal and Jane live in California, a state that follows community property laws. During Hal and Jane's marriage, Hal purchases a house and receives his favorite uncle's gold coin collection as an inheritance. Although Hal purchases the house on his own, Jane receives title to half of the house by operation of law. Hal and Jane own the house together, each having an undivided one-half interest. As for the gold coin collection, Hal is the sole owner, since it was acquired as a result of an inheritance.

Tip: Another form of ownership for married couples is through a trust or QTIP trust.



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