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## Joint Ownership: The Pros and Cons

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Joint Ownership, under Florida law, real or personal property owned by husband and wife in both names is a tenancy by the entireties. This ownership also has the characteristics of a joint tenancy with right of survivorship. Therefore, when husband and wife take title in both names, and one of the parties dies, title and ownership vest immediately in the surviving spouse. It is for this reason that joint ownership is used as an inexpensive and convenient substitute for a Will.

### Joint Ownership Pros

Parties other than husband and wife who wish to create a survivorship joint ownership (tenancy) on their estate planning documents, must be sure that title is taken in both names followed by the words "as joint tenants with right of survivorship, and not as tenants in common." The reason for this requirement is that Florida Law states that unless the intention to create a "joint tenancy with right of survivorship" is specifically stated a tenancy in common is presumed.

A tenancy in common is ownership by two or more persons where the interest of a deceased co-tenant passes as a part of his probate estate to his heirs or the beneficiaries of his will, rather than to the surviving co-tenants. It can be seen, therefore, that a tenancy in common will not avoid probate.

A separate rule applies in the case of bank and savings and loans joint accounts. Florida law provides that bank or savings and loan association accounts registered in the name of two or more persons being payable to the order of one or more of them, or the survivor or survivors shall, upon the death of one party, be the property of the survivor or survivors in the absence of fraud or undue influence.

The popularity of survivorship joint ownership (accounts) may be attributed to their use to provide convenient joint access to funds and to avoid probate. However, joint ownership can be a problem for assets other than bank and savings and loan accounts. In the case of stocks, bonds and real estate, the signatures of both joint owners is required in order to sell or transfer the asset. If, through accident or illness, a joint owner of these assets loses the ability to sign his name, it may become impossible to sell or transfer the asset without the court appointment of a guardian.

### Joint Ownership Cons

A potential pitfall of **joint ownership** is the possibility of estate taxation. In the case of husband and wife, upon the death of one spouse, one-half of the jointly owned property will be accountable for estate tax purposes in the estate of the spouse who dies first. 'Survivorship' has passed ownership of the deceased spouses one-half interest of joint property to the surviving spouse. On the death of the second spouse, the entire value of the property will be taxable for estate tax purposes.

On the death of a joint owner who is not a spouse, the presumption is that the party who dies first furnished all the consideration for the purchase of the asset and the entire value of the asset will be accountable for estate tax purposes in that party's estate. The surviving joint tenant must offer proof of his or her contribution in order to overcome the presumption and reduce the value accountable in the estate of the deceased joint owner. Upon the death of the surviving joint owner, the entire value of the property will be taxable for estate tax purposes.

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Another potential pitfall stems from the fact that jointly owned property passes outside the provisions of a Will. People often provide in their Will that property is to be shared equally but place some assets in joint ownership. Those assets pass to the surviving joint owner who has no legal obligation to share or account to the beneficiaries under the Will.

It takes thought to create estate planning documents that take advantage of *joint ownership* opportunities while avoiding pitfalls.