

JTWROS Have Potential Risks

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It's common for persons to jointly own assets, and many reasons exist for establishing such an ownership arrangement. Examples of assets commonly owned jointly include a home, land, financial accounts, cars, safe deposit boxes, etc. Older individuals often execute joint ownership arrangements to enable their adult children, other family members or friends to access the assets if the older individual loses capacity. Additionally, joint ownership arrangements often enable the asset to pass upon the death of one of the owners without the necessity of probate.

The accessibility of the asset by multiple individuals is one of the most significant benefits of creating a jointly owned asset. Additionally, joint ownership arrangements often enable the asset to pass upon the death of one of the owners without the necessity of probate.

A bank account is one of the most common jointly-owned asset. Typically, such an arrangement is created when opening the account with language such as "Joint Tenants with Right of Survivorship," "JTWROS," or by adding "or" between names. Such an account provides that when one owner passes away, the surviving owner automatically inherits 100% of the asset. If attempting to create a JTWROS account at a bank, one must make sure the account is subject to such a survivorship agreement in order to avoid probate of that particular account. Not all joint accounts are automatically subject to a survivorship agreement between the joint owners. Accordingly, the result of inaccurate, uninformed advice in setting up an asset as a JTWROS, or mistakenly believing that an asset is a JTWROS, could cause devastating financial consequences.

The proper use of JTWROS accounts can benefit individuals; however, the improper use of jointly-owned assets can be a drawback as well. For example, absent a contrary agreement, JTWROS property owned by a married couple would pass to the surviving spouse upon the death of one of the spouses. If the surviving spouse is receiving a government benefit, such as long-term care Medicaid, the inherited asset could potentially cause a loss of benefits due to excess resources and force the surviving spouse to privately pay for long-term care. This could apply to other joint tenants, as well, and the loss of government benefits could potentially be far more costly than probate.

JTWROS assets pass directly to the surviving owner and do not pass subject to the Will of the deceased owner. For example, a parent may not know that his or her JTWROS assets, which she intended to be split equally among all of her children, would only go to the surviving co-owner, regardless of what is written in the Will. A better alternative to this arrangement would be to leave the parent as sole owner of the asset, have her sign a power of attorney naming one child as her agent to help manage her financial affairs and make the account "payable on death" to all children; or, alternatively, leave off the designation completely to allow the asset to pass according to the provision of the Will. This would achieve the parent's actual intentions and ensure that all children are treated equally.

Other potential risks of JTWRROS assets include tax issues associated with ownership of the property, liability of the property to the debts and liabilities of either owner, including liability of the asset as a result of business losses and divorce. Moreover, some people have misconceptions regarding the accessibility of the funds in the joint account during the lifetime of both owners. All funds held in the account are available for withdrawal by either owner during the life of the account, regardless of which owner deposited the funds into the account.

Due to the complexities surrounding a seemingly simple arrangement, it would behoove anyone seeking the benefits of joint ownership to first seek competent legal advice. Elder law attorneys are an excellent resource for such specialized guidance and can advise of the risks as well as the rewards of such an arrangement. The certified elder law attorneys at Wright Abshire can assist your family in delicate legal matters like these.