

What Is the Best Form of Property Ownership for Me?

In planning your estate, it is customary to consider wills and trusts (as well as intestacy) as a means of property distribution. As a matter of fact, the manner in which you hold title to your assets may supersede provisions contained in other transfer documents. Likewise, significant tax benefits can be gained (or lost) depending on the characterization of your property.

Let's take a look at the general classifications of ownership.

Sole Ownership

Sole ownership occurs when one owns a complete interest in property. Ownership is passed by the typical transfer documents, or by the laws of intestate succession. The complete interest is included in the estate of the decedent. Because of this, the beneficiary receives a full step-up in basis. This, in essence, brings up the original purchase price to the fair market value, thereby eliminating a capital gain.

Joint Tenancy

Joint tenancy exists when two or more persons share equal, undivided interests in property. Joint tenancy is not limited to spouses. Anyone can share joint interests, but there are tax benefits when this arrangement is shared only between husband and wife (qualified joint tenancy).

A joint property interest cannot be passed through traditional documents, such as a trust or a will. Ownership of a joint interest passes by "operation of law" to the surviving joint owner(s). Further, property held in joint tenancy will not be subject to probate.

Under qualified joint tenancy, half of the property is included in the first decedent's estate. Because of this, the surviving spouse obtains a stepped-up basis only on the first decedent's half of the property.

If any nonspouses participate in joint ownership, the entire value of the property is includable in the decedent's estate, reduced to the extent that the estate can prove that the surviving tenant(s) contributed to the cost of the property.

Another form of joint ownership — tenancy by the entirety — is similar to joint tenancy, but it can only be created between husband and wife. Unlike joint tenancy, an interest cannot be transferred without the consent of the spouse. Tenancy by entirety is only recognized in certain states.

Tenancy in Common

Tenancy in common provides an undivided interest in property between two or more people. Unlike other forms of joint ownership, however, these interests can be owned in different percentages.

A tenant in common can utilize the traditional transfer documents, but interest cannot be passed by operation of law.

Community Property

Under community property statutes, all property earned or acquired by either spouse is owned in equal shares by each spouse. The essential principle of community property is that the earnings of either husband or wife and the revenue from their property belong not to the producer but to the community of the husband and wife.

For estate conservation purposes, there are no restrictions on how each spouse can give away his or her half of the community property. There is no law requiring one person to leave his or her half to the surviving spouse, although, of course, many do.

Currently, nine states have community property laws: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin.

The amount includable in the estate of a decedent is based on his or her percentage of ownership. The beneficiary of the property interest receives a stepped-up basis on that portion of the property. It is important to remember that the beneficiary can be chosen by the decedent. This is in contrast to joint tenancy, under which the surviving joint tenant(s) automatically inherit the interest of the decedent.

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