Q & A’s about Joint Ownership
Joint ownership can be a convenient and practical way for two or more people to own assets. But there can be disadvantages to joint ownership — it isn’t for everyone. The following questions and answers may help you determine if joint ownership is right for you.

Q. What is “joint ownership”?

A. Joint ownership is the ownership of the same asset by two or more people. Real estate, bank accounts, securities, and other items of personal property all can be owned jointly.

Joint ownership may take several forms. State law determines which forms of joint ownership are recognized in your state. For the most part, however, when a person speaks of “joint ownership,” he or she is referring to joint ownership with a right of survivorship or “joint tenancy.” (In some jurisdictions, the term “tenancy by the entirety” is used where the joint owners are husband and wife.) The distinguishing feature of this form is that, upon the death of one owner, the survivor (or survivors, if there are more than two owners) automatically will receive the deceased owner’s interest in the property. For example, if you and your spouse acquire property as joint owners with a right of survivorship, when you die, your spouse will take title to the entire property.
Q. **What are the gift-tax consequences?**

A. In general, when one person provides all or most of the funds to purchase an asset to be owned by him or her and another person as joint owners with a right of survivorship, there is an immediate gift made to the second party for federal gift-tax purposes. In the case of a husband and wife, however, the general rule does not apply. No gift is made when a husband and wife take title to an asset as joint owners with a right of survivorship — no matter who provided the funds for the acquisition of the property.

Q. **What about federal estate taxes?**

A. The estate-tax treatment of jointly owned property depends on whether or not the joint owners are married. If the joint owners aren’t married, the general estate-tax rule requires that the entire value of the jointly owned property be included in the estate of the first owner to die, except for the portion that was contributed by the surviving owner or owners for the acquisition of the property. The decedent’s estate must establish who contributed how much. In the absence of any proof, the entire value of the property will be included in the deceased owner’s estate.

For example, suppose you and your brother hold property as joint owners with a right of survivorship and you paid the entire purchase price. When you die, the full value of the property is includable in your estate for estate-tax purposes. If, on the other hand, your brother had supplied one third of the funds for the property’s acquisition, only two thirds of the property’s value would be includable in your estate.

If you and your brother acquired the property as a gift from a non-owner or as an inheritance, only the value of your fractional interest in the property is estate-tax includable. To illustrate, if your father died and left stock to you, your brother, and your sister, as joint owners with a right of survivorship, and your sister later dies, only one third of the value of the stock must be included in her estate.

Q. **What are the estate-tax rules in the case of married joint owners?**

A. The general rule is quite straightforward: If you die, your estate must include for estate-tax purposes 50% of the value of all property owned by you and your spouse as joint owners with a right of survivorship. This 50% rule applies...
regardless of who furnished the original funds for the property and whether or not the joint ownership was received by gift or inheritance.

However, the 50% value included in your estate will not result in any additional estate tax. Why? Since the property owned jointly by you and your spouse passes directly to the surviving spouse, the value of that property (to the extent it is includable in your estate) qualifies for the unlimited estate-tax marital deduction. So, the value of the jointly owned property included in your estate is offset entirely by the marital deduction.

If your surviving spouse later dies while owning the formerly jointly owned property, the entire value of the property will be includable in his or her estate for estate-tax purposes. Note that special rules may apply to property placed in joint ownership with a spouse prior to 1977.

Q. Are there any estate-tax advantages to placing property into joint ownership with a spouse?

A. Not really. Suppose you hold property individually and, at the time of your death, leave it to your spouse outright under the terms of your will. The estate-tax consequences would be similar to those that would result if you and your spouse had jointly held the property —

no additional estate tax on your estate due to the unlimited marital deduction and full inclusion in your spouse’s estate.

Moreover, by holding property individually — rather than jointly — you may have a greater array of estate-tax saving opportunities available to you with respect to the property. In other words, your estate-planning options are left open and your estate plan may be more easily modified to take into account changing circumstances.

Q. What are the non-tax advantages to placing property into joint ownership?

A. First, the idea of a family “partnership” is appealing to many married couples. Joint ownership often instills a sense of family well-being. Second, joint ownership can be entered into simply and inexpensively. Usually, little more than a signature on a form or two is required.

Third, joint ownership of certain assets, such as a bank account for household expenses, is convenient and practical. And, fourth, since jointly owned property passes automatically to the surviving joint owner(s), joint ownership generally avoids the probate process and the accompanying delays and publicity. Consequently, some of the costs incurred through probate may be saved.

Q. Is there any estate-tax liability to placing property into joint ownership with a spouse?

A. Yes, if the property is transferred to a surviving spouse and the property is includable in your estate for estate-tax purposes.

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Q. **Can my spouse and I place all our assets into joint ownership and avoid the necessity of making wills?**

A. It's possible, but may not be wise. While it is true that joint ownership with a right of survivorship eliminates the need for a will provision dealing with the jointly owned property, using joint ownership as a substitute for a will is not recommended for several reasons.

For instance, it is always possible that some items may be overlooked and not put into joint ownership. Since you would have no will, the overlooked items would be distributed under your state's intestacy laws — in a manner that may not conform to your desires.

In addition, joint ownership lacks flexibility. The time and manner of distribution of jointly owned property are fixed and cannot be easily modified. And joint ownership precludes the use of other estate-planning techniques which may help to save estate taxes upon the death of the second joint owner.

Q. **Are there any other disadvantages to jointly owned property?**

A. Yes. First, you limit your legal control over the property. At least two people will have control over how the property is to be used, invested, or managed. Will all of you always be available, competent, and agreeable?

Second, if you die first, you will have no say in how the surviving owner or owners will dispose of the property — leaving the possibility that the property may ultimately pass to an unintended or undesirable beneficiary.

Third, your death could place income-producing assets — assets that may require substantial management or investment expertise — in the hands of an inexperienced surviving owner.

Q. **What are the alternatives to joint ownership?**

A. One is to hold property individually and provide in your will for its disposition to your heirs directly. Or your will could provide that your property be held in a trust for the benefit of your spouse and children or other beneficiaries. Through the use of such a trust, you are able to provide your family with the safety and protection a trust affords and direct the ultimate disposition of your assets among your heirs. And, by naming a professional asset manager (our organization, for example) as trustee of the trust, you can secure for your beneficiaries high-quality investment and administrative services.
Another option is to establish a revocable living trust and to transfer assets to that trust to be managed for your benefit during your lifetime and for your beneficiaries’ benefit after you die. Your will could provide that the non-trust assets remaining in your estate be “poured over” to the trust to be administered as a single fund for your family’s benefit. And, since such a trust is revocable, you may change or terminate the trust at any time.

Should you place your assets in joint ownership? Joint ownership does have its pitfalls and often is not the simple, convenient arrangement it is touted to be. The question of whether joint ownership is the proper route for you to take is best answered with the help of your attorney and other professional advisors. If we can be of help, don’t hesitate to call.