



## **Estate Planning Pitfall**

### **You and your spouse own most of your property as joint tenants**

There's a common misconception that holding property as joint tenants with rights of survivorship is an effective estate planning technique. Sure, owning real estate, investment accounts or other assets jointly is a simple way to ensure that property passes directly to a spouse without going through probate. But for many people it's also a sure way to increase their tax bill.

If your wealth exceeds the \$2 million estate tax exemption and you and your spouse own most of your property as joint tenants, you're losing out on valuable estate planning opportunities.

When jointly held property passes from one spouse to another, it's shielded from estate taxes by the unlimited marital deduction, but the exemption of the first spouse to die is wasted. Later, when the surviving spouse dies, the property's value is included in his or her taxable estate.

A better strategy is to own property as tenants in common, or otherwise "equalize" your estates by owning separate property that's roughly equal in value. Doing so, you can take advantage of each other's exemption and other techniques for minimizing estate taxes.

For example, if you own property separately, you can use some of it to fund a bypass trust that provides your spouse with income during his or her life, but then passes to your children or other heirs at death, thereby "bypassing" your spouse's taxable estate.

If you live in a community property state, holding assets as community property rather than as joint tenants offers significant income tax benefits. Community property is entitled to a full basis step-up.

But if you and your spouse jointly own highly appreciated assets that aren't considered to be "community property," the surviving spouse is entitled to a stepped-up basis on only half of its value. If that asset is subsequently sold by your surviving spouse, he or she may incur a substantial capital gains tax liability as a result of the sale. So it's important to convert any property held as joint tenants into community property.

*For more information, please contact us via phone or e-mail, or visit us on the World-Wide Web:*

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