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Pitfalls of Joint Ownership with a Child

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For married couples, joint ownership of assets is the norm. Both spouses have full access to all the marital assets and even when one passes away, the other is able to continue to use the assets however he/she sees fit. Michigan law favors joint ownership between spouses and often the surviving spouse receives all the marital property without the need for any court involvement. This is because jointly owned property (as well as assets that allow for an automatic beneficiary designation such as life insurance and retirement accounts) pass to the named survivor or co-owner immediately upon death. While this may work well between spouses, it is not always the most effective way to pass property to the next generation.

In an attempt to avoid probate or simply for convenience, many people name a child as a joint owner on assets. Joint ownership with a child may be effective for a few but for most it should be avoided. In addition to possible gift tax problems and exposure to the child's creditors, joint ownership can and does lead to family chaos in the end. When a parent places assets in joint tenancy with one child, the intent is often to allow that child to help pay bills and ultimately divide the assets among all of the children when the parent dies. Typically, the child who lives closest or is most involved in the parent's care is the one named. When the parent dies, however, legal ownership of the asset passes directly and that child, who is not required to follow the terms set forth in the parent's Will or Trust. In many cases the parent may have even verbally expressed a desire for a division of the assets, but without proper planning, the result is often much different and can even lead to lengthy and expensive litigation. The best way to avoid these problems is to create an estate plan specifically designed to meet your wishes.

A basic estate plan contains the tools necessary to avoid all these problems. Durable Powers of Attorney give a designated person the legal authority to act on your behalf without making them an actual owner. This avoids potential problems with creditors as well as an unfair distribution upon death. Wills can specifically designate where property should go and allows for the nomination of a Personal Representative to handle the estate after death. In other words, your true wishes and desires can be carried out rather than just leaving it up to one of the children to "do the right thing." Lastly, if avoiding probate court is the primary goal, a Trust is likely something you should consider.

If you do not have an estate plan in place, one of our Estate Planning attorneys would be happy to sit with you to discuss your options. It is also important to have your existing plan reviewed by an attorney to determine how your assets are held and to make sure you are protecting yourself and the legacy you wish to leave.