



## Avoiding Joint Ownership of Assets

### Joint Tenancy Is Not The Best Estate Planning Option

Joint ownership of assets with a person's children or other individuals can lead to disastrous results if not used properly. "Joint tenancy" is the legal term for joint ownership and it applies to any asset that is "titled," including bank and investment accounts, real estate, cars or boats. When a joint tenancy is created, two (or more) individuals own the asset together and, upon the death of one joint owner, the remaining owners take over that person's interest. Many mistakenly believe that placing a home or account in joint names with their children is a fast and easy estate planning tool that avoids the hassle of probate. This may be true in limited circumstances, however joint tenancy often creates more harm than good. The following illustrates some of the most common pitfalls associated with joint ownership:

**Joint Ownership Trumps Your Estate Plan** – That's right! Any property owned in joint tenancy passes automatically to the surviving owners, outside of probate, regardless of what your Will says. For example, imagine a widow with three children, two of whom live out of the area. The widow decides to place her checking account in joint names with her local daughter for convenience sake, but intends to leave her entire estate to her three children equally. When she dies, the other two children are excluded from inheriting the account as the daughter becomes the outright owner as surviving joint owner. Chances are, the widow did not intend this result; however, the daughter is under no legal obligation to share ownership of the account with her siblings or use it for her mom's final expenses.

**Unexpected Exposure to Creditors, Judgments and Exes-in-Law** – A joint owner can encumber the property through mortgages, liens or judgments. As well, the property is considered an asset of each owner and is therefore potentially subject to attachment by creditors. If you decide to place your home in joint tenancy with your children, you run the risk of losing your property if one of your children is on the losing end of a civil judgment. What's more, if one of your children goes through a divorce, his or her spouse could claim an interest in the property during the division of assets.

**...A JOINT TENANCY IS GENERALLY  
NOT HELPFUL FOR MEDICAID  
PLANNING PURPOSES**

Each of these scenarios by itself could result in the requirement to sell the property to satisfy the judgment or claim, leaving you with only your interest remaining – which will be insufficient to repurchase a comparable home.

**Loss of Medicaid Eligibility** – If you are considering your long-term care needs, you may wish to someday apply for Medicaid benefits to cover the costs of a nursing home or assisted living facility. Under the current

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Medicaid eligibility rules, Medicaid could consider the placing of your home in joint ownership with another a gift and would impose a period of ineligibility for benefits based on the value of the home. You could then be required to either sell your interest (and spend that money to pay for your long-term care) or endure a potentially lengthy penalty period. Either way, a joint tenancy is generally not helpful for Medicaid planning purposes and should be avoided.

While we do not suggest that joint tenancy is to be avoided in all circumstances (e.g., it is often appropriate for married couples and can be helpful to have a jointly-owned modest checking account for bill paying purposes), this arrangement usually invites an increased risk of trouble with your estate plan. Better estate planning tools exist such as Powers of Attorney and Trusts which can accomplish the same goals intended by joint tenancy. A comprehensive plan eliminates the unforeseen dangers joint ownership of assets may cause for you and your family.

## OUR GOVERNING LADY

Lady Justice was originally known as the goddess Themis which in Greek means “order.” Today our laws and legal system are derived from her stories and ideals. She symbolizes justice, objectivity and equality.



Stanley Kozichousky, of Bridgeville, Delaware, created our Lady Justice stained glass piece that now hangs in our office. She offers us and our clients a reminder of the principles of justice that she represents.

## BELLA’S BRIEF

*The Office from a Dog’s Perspective*



They say it doesn’t take much to make a dog happy, so that must make me high maintenance. Of course I will roll over for a belly rub, but you better bring more to the dance if you want my tail to wag.

That’s why I am a little hot under the collar today. Of late there hasn’t been time for a belly rub, much less a trip to the spa with the ladies. I really thought things would calm down and the dust would settle after the partnership... boy was I wrong. Two Men and a Truck showed up the other day and started hauling stuff out and bringing stuff in. It was pure chaos that interrupted my Zen

and naptime. I was left with the sickening feeling that we may be adding divorce law to our areas of practice. That’s what happens, right? One minute you’re happy, full of dreams and the next you’re dividing assets. Then there’s custody! For the love-family law would be more than I could possibly bare. So I took action. I demanded my leash and took these two for a long walk to set them straight. You’ll be happy to know that my well timed intervention revealed a total misunderstanding (on my part- there I admitted it). As it turns out we are adding staff, which explains the new furniture, and I am getting a place at the beach!

xoxo Bella 

## TIME OUT — STAFF PROFILE

*Erin L. Steele, Elder Law Coordinator*

### ON THE CLOCK:

Erin was born and raised in Lewistown, Pennsylvania. She is a graduate of Shippensburg University, in Shippensburg, Pennsylvania. Erin's career began at a law firm in Georgetown. In 2005, Erin accepted a marketing assistant position at a continuing care retirement community in Seaford. During her seven years there she was promoted from marketing assistant to sales counselor to marketing manager. In 2012, Erin accepted an admissions director position at a rehabilitation and health center and remained there prior to joining Procino-Wells & Woodland, LLC in March 2013. Erin's experience in serving mature adults, legal services, sales and marketing has prepared her for her role as elder law coordinator at Procino-Wells & Woodland, LLC.



**OFF THE CLOCK:** Erin resides in Millsboro with her husband Jesse and their four legged furry "children." She enjoys animals, going to the beach, reading, rooting for the Yankees, travelling, skiing and spending time with family and friends.

### *A note from the attorneys...*

The summer has been a whirlwind in our office with no signs of slowing down this fall. In just a few short months since our first ever newsletter we have added two staff members, launched a new website and completed construction on our new office in Lewes. Being able to expand the practice to serve our neighbors in eastern Sussex County is a dream come true for us. And while we welcome the salt air, the atmosphere of our new office will not change from what we have proudly established in Seaford. We look forward to seeing you in either location.

*Michele B. Quisenberry*

## UPCOMING EVENTS

*What is on our Calendar?*

- September 1 — Labor Day; Office Closed
- September 18 — Heritage Shores Community Estate Planning Seminar
- September 19 — Cheer Beach Day
- September 27 — Women's 4<sup>th</sup> Annual Health Fair
- October 4 — Walk to End Alzheimer's
- October 11 — A Parkinson's Symposium "Quality of Life"
- October 13 — Annual LIVE Conference "Live Safe & Secure"
- October 16 — Elder Law Basics—SCBA/SDEPC Continuing Legal Education Course
- October 29 — Today and Tomorrow Conference
- November 5 — Ameriprise Asset Protection Seminar
- November 8 — The Importance of Estate Planning Seminar
- November 27 — Thanksgiving; Office Closed
- November 28 — Black Friday; Office Closed

*For more information, visit [www.pwwlaw.com](http://www.pwwlaw.com).*

## LEGAL MUMBO JUMBO

*Legal Language in Layman's Terms*

### FIDUCIARY

A person who is required to act for the benefit of another person on all matters within the scope of their relationship (e.g. Executor, Trustee, or Agent).



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*Planning today to protect your family's tomorrow.*



# OFF THE CLOCK

We would like to thank our featured referrer of the month:



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*Procino-Wells & Woodland, LLC is a proud member of:*



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