

Death of the Joint Tenant and the Extinguishing of Creditors' Claims

The death of a debtor does not necessarily eliminate debt but becomes an obligation of a Community Property surviving spouse or the decedent's trust or estate. While the creditor is required to perhaps file a claim with the executor or seek to have the judgment entered in the name of the surviving spouse, the debt remains intact. But what happens if the property at issue is held in joint tenancy or in a Payable on Death account in a bank? Does the joint tenant take the property subject to the creditors' claims? The answer is no, and this article discusses basic law and protections that creditors may want to consider.

The Basic Law of Extinguishment of the Debt

Joint Tenancy is the ownership by two or more people of property in common with right of survivorship. The ownership is joint and undivided, (each owner owns an undivided portion of the entire asset, be it real estate or a bank account). Unlike Tenancy in Common, when a joint tenant dies their interest immediately and completely vests in the surviving joint tenants. Thus, if I die and own my home in joint tenancy with you, the instant of my death you own the entire property. The most common alternative ways to own property is via Tenancy in Common or Community Property. In Tenancy in Common, we again own an undivided joint interest, but upon my death my interest goes to whomever I name in my will or trust or my heirs at law if I die intestate. Community Property joint ownership has its own rules, can only exist between spouses, but essentially it is joint ownership by husband and wife and the spouse has both certain rights to the community property and takes the property subject to the debts of the deceased spouse.

It makes good sense for couples to own property as Community Property since, among other benefits, they obtain a stepped-up basis at time of death on the entire property. However, aside from its ease of formation, the great benefit of Joint Tenancy may be the elimination of the debts applying to the property even if the joint tenant died owing money. The tools of debt collection allow abstracts of judgment to be filed on property and for attachment of liens on the property. Death of a joint tenant can void those tools. California Probate Code §5130 defines a joint account as "an account payable on request to one...of two...parties whether or not mention is made of any right of survivorship."

California Probate Code §5302(a) states, "...sums remaining on deposit at the death of a party to a joint account belong to the surviving party(ies) as against the decedent's estate, unless there is clear and convincing evidence of a different intent." Therefore, property held as Joint Tenancy will pass directly to the surviving joint tenant and not to the decedent's estate unless there is clear proof that the decedent planned otherwise. Thus, creditors of the estate would have no claim against the property passing in Joint Tenancy unless the surviving joint tenant somehow assumed that debt.

"The distinguishing characteristic of a joint tenancy is that each tenant has a right of survivorship, by which, upon the death of the other tenant, the survivor will automatically succeed to the entire property. In effect, the decedent's title is extinguished, and with it any interest to which his judgment creditor's lien had attached. The result is that the lien ceases to encumber the property, and the survivor succeeds to the whole property "free and clear." (Dang v. Smith, 190 Cal. App. 4th 646). This would hold true for real property as well as accounts. Thus, if property is held as joint tenants and one of the holders passes away, the property would pass directly to the surviving joint tenant clear of any encumbrances of the deceased joint tenant and no interest in the property would pass to the decedent's creditors or heirs.

Payable on Death (POD) Accounts

According to Probate Code §5140 a "POD account" means "(a) An account payable on request to one person during the person's lifetime and on the person's death to one or more POD payees."

Probate Code §5301(d) states, "in a POD account, the POD payee has no right to the sums on deposit during the lifetime of any party, unless there is clear and convincing evidence of a different intent." Sums deposited into a POD account belonging to the surviving party as against the decedent's estate, unless there is clear and convincing evidence of a different intent. (Probate Code § 5302(b)) In conclusion, a POD account would pass directly to the POD payee and not the decedent's estate just as an account held in Joint Tenancy would.

Clear and Convincing Evidence Criteria

Most civil cases impose a burden of proof to prove their case. The most common is, "proof by a preponderance of the evidence" which means that the party proves that their version is, "more likely than not." The highest burden is in criminal cases in which a party must be proven guilty, "by proof beyond a reasonable certainty" which has been defined as proof such that there is a, "moral certainty" of guilt. Proof by "clear and convincing evidence" is midway between those two levels. It does require proof by far more than merely "more likely than not," in the mind of the trier of fact.

Joint Tenancy & Asset Protection

The above law should make it clear that if you are a creditor, it is vital to do more than merely get a lien against property held in Joint Tenancy. One must foreclose on the lien or judgment prior to death or may lose the security. Unlike Community Property, there is by no means a right that can survive death. It also means that if a joint tenant is pledging their interest in jointly held property, absent getting the other joint tenant to sign onto the security, one's security may end at death of the joint tenant. If you are a potential judgment debtor, the ability to own accounts and property in a way that eliminates all liens upon your death should be carefully considered. Note that until you die, your interest can still be attached by a creditor. Also note that unless it is the joint tenant you wish to inherit; this plan could result in the interest going to someone that you do not want to gain the entire property. Legal counsel and advice are vital before you determine if it makes sense to own in joint tenancy or POD accounts.

Conclusion

Too often we see people who fail to understand the powerful implications of owning property in Joint Tenancy rather than some other form of joint ownership. The detriments are significant but the ease of creating Joint Tenancy...and the tendency of banks and title companies to simply create documents that hold the property in Joint Tenancy without really explaining the ramifications to the buyers or depositors...make it a common method of ownership. Therefore, it is vital for the owner...and the owner's creditor...to fully understand all ramifications of such ownership and to take appropriate steps ahead of time to ensure that such ownership does not interfere with goals and rights.