Welcome to Our November 2013 Asset Protection Newsletter!

What are the dangers of owning assets as tenants-in-common?

Each co-owner in a tenancy-in-common or tenant-in-common own a divided fractional share of the property. This creates serious lawsuit dangers and, reciprocally, no creditor protection. There are many examples to illustrate the risks of tenants-in-common. For instance, if you and your friend John are tenants-in-common and own an apartment building, each of you can sell, gift, or mortgage your half interest in the building without the

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Important Changes in Florida Law

Latest update: In June of 2010, the Florida Supreme Court held in Olmstead consent of the other. You are thus essentially 'partners' in the business of renting apartments, collecting rents, maintaining the premises, etc., and the building provides you an income. Perhaps someday you expect to sell the building for a hefty profit.

Since you and John are tenants-in-common, you each own a separate share in the building which is distinct from the interests of the other tenants-in-common. Your personal creditors cannot claim your co-owner's interest and, conversely, if John is sued for reasons unrelated to the building, John's creditors can only claim his half interest in the building. Your half remains safe from John's creditors. While this may seem acceptable, particularly if you see yourself as the safe co-owner, a tenancy-in-common can nevertheless cause problems.

One big risk is that your co-owner's creditors can force a sale of the entire property to satisfy your co-owner's personal debts. Since your co-tenant, John, can transfer his share of the tenancy-in-common property without your consent, John's creditor can 'step into his shoes' and similarly sell his interest. You may possibly negotiate to buy your co-owner's interest to avoid the forced sale of the entire property, but this is not always practical; you may not have the money. Should the court force the sale of the entire property, you will nevertheless lose the property, although you will recover your half share of the net proceeds from the forced sale.

Suppose John's creditors do not force the sale of the entire property but instead successfully bid for John's half interest in the property. You now have a new partner – John's creditor! It can and does happen. You can see that John's financial problems can cause you serious problems, and your problems can become John's headache. More importantly, how safe is your ownership interest from your own creditors when you own property as tenants-in-common? You already know the answer: If John's creditors can seize his interest, your creditors can seize yours.

This is why co-owning property as tenants-in-common is too risky. If you or your co-owner has financial problems, you can easily lose control of the property or you might lose significant money. Avoid this trap. We will later tell you about many better ways to co-own assets through various protective entities. If you insist upon titling assets as tenants-in-common, then make certain that your co-tenants are financially secure; otherwise you risk a forced sale, a new co-owner or lost control of your investment.

Aside from the vulnerability of your co-ownership interest, perhaps an even bigger pitfall is that tenancy-in-common expands your liability. If John accidentally injures somebody through his negligent management of the co-owned property, who gets sued? Both you and John, of course. Since you co-own the property,

v. Federal Trade Commission (No. SC08-1009) that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company.

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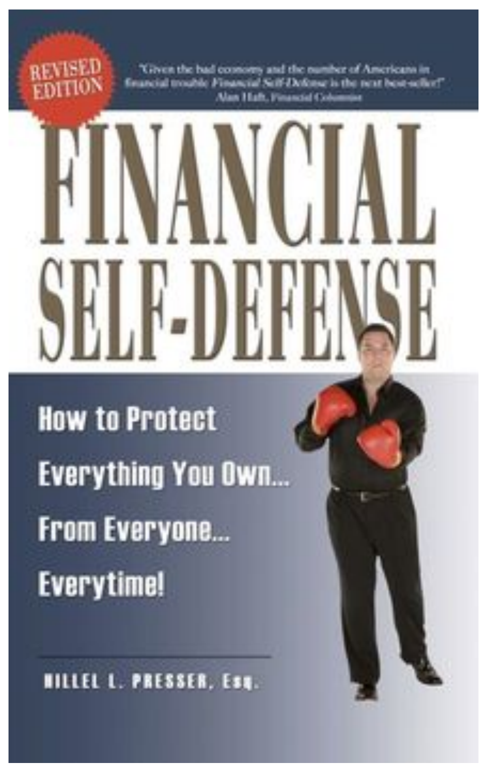

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you essentially created a general partnership. Should the plaintiff win a $5 million judgment or any amount that exceeds what the property or John is personally worth – who pays? You, of course. As co-owners, you and John have joint and several liability for any liability that arises from co-ownership of the property. The bottom line is never to own property directly as tenants-in-common. Co-own the asset indirectly through a protective entity.

Can you discuss co-owning assets as joint tenants?

Joint tenancy is a particularly popular form of co-ownership. Several key features distinguish it from tenancy-in-common. One such feature is its right of survivorship. When one joint tenant dies, the jointly owned property automatically passes to the surviving joint tenant(s). Jointly owned property then passes outside a will, and thus avoids the expense and delay of probate. Because joint tenancy avoids probate, many financial and legal advisors recommend that their clients title their assets as joint tenancy. Unfortunately, these advisors don't always tell their clients how joint ownership can hurt them. In our view, joint tenancy is nearly always a mistake because it significantly increases lawsuit risks, frustrates sound estate planning and provides little or no lawsuit protection.

For starters, jointly owned property, whether personal property or real estate, creates the same lawsuit and creditor risks as does tenancy-in-common. In some circumstances you can have greater exposure. Generally, you also have the same lack of protection as you do with tenancy-in-common. Your personal creditors can seize only your interest in the co-owned property. You also have about the same tenancy-in-common risks. If your co-owner(s) has legal or financial problems, his creditors can claim his interest in the property and become your co-tenant. Alternatively the creditor can force a sale of the entire property to recover the debt owed by your co-owner(s).

However, joint ownership has an added twist. It puts you in a 'winner-takes-all' game. You 'gamble' that you will survive your co-owner (joint tenant). Because jointly owned property automatically passes to the surviving joint tenant(s), if the liability-free tenant dies before the debtor tenant, the entire property automatically passes to the debtor, and the entire property can then be claimed by the surviving debtor's creditors. For example, if you and John own the building as joint tenants, and you die, John's creditors could then levy or seize the entire building. Your family would have no further ownership claim to the building. Of course, the alternative outcome in this 'winner-takes-all' game is that if the safe co-owner (you) survives the debtor co-owner (John), you own the entire building free of John's creditors. This may be one advantage with joint tenancy: It is you who may win the game.

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If you know anyone that would benefit from this newsletter, please have them contact us at **Info@AssetProtectionAttorneys.com**.

For every 60 minutes you spend making money, spend 60 seconds thinking about how to protect it!

Visit Us At Our Office Location!

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Joint tenancy also impairs good estate planning. For instance, if your estate plan is to gift your property at your death to your friends, you would normally provide for this in your will or living trust. Joint tenancy may frustrate this estate planning objective because whatever property is jointly owned instead passes automatically by rights of survivorship to your surviving joint tenant(s). This automatic transfer occurs the instant you die. Your will or living trust would be totally ineffective in disposing of any jointly owned property. Any beneficiaries that you designate in your will or trust to inherit your share of jointly owned property are effectively 'disinherited' since the property instead goes to the surviving joint tenant(s). We see this avoidable tragedy every day because many people do not understand this survivorship feature about joint ownership, nor do their advisors always inform them. And, as we say, plenty of folks have absolutely no idea how their assets are titled or its consequences. They should review these issues with their attorney.

At what age should I create my first Will and how often should I update it?

Any person over the age of 18 is entitled to create a Will. If you don't create a Will then state statutes determine where your money and property goes at your death. In almost every jurisdiction it would be your spouse and/or children, if you have any, and if not, your parents.

Therefore, when you are a single adult with living parents it may not be a big deal for you to create a Will. However, what if you are engaged, and you want your fiancé to have your assets, then you must have a Will.

What if you have children and you are in a bad marriage? Under Florida law, your spouse would get your whole estate if the spouse is the parent of all of your children. A spouse is entitled to 30% of your collective assets so you do not have to leave any more than that (Florida Homestead is an exception).

Therefore, if you want your assets to be distributed according to you wishes (as opposed to state law), you should create a Will.

You should update your current Will and/or Estate Plan if you get married, divorced, re-married, have children (not necessarily each time if nothing else has changed), if your assets radically increase or decrease, and if you obtain a special needs beneficiary.

The Presser Law Firm, P.A. - Asset Protection Attorneys

The Presser Law Firm, P.A. represents individuals and businesses in connection with the establishment of comprehensive Asset Protection plans that incorporate both domestic and international components.

We help our clients protect themselves from lawyers, malpractice claims, creditors, foreclosure deficiencies, former or current spouses, children, relatives, and greedy lawsuit-obsessed citizens. While many people can make money, few know how to protect it.

In addition to Asset Protection, The Presser Law Firm, P.A. represents individuals in the areas of business formation, legal and business counsel, estate planning, and estate administration (wills and trusts).

We have been featured in numerous newspapers and magazines, among them Forbes, Sports Illustrated, The Robb Report, The Houston Chronicle, and The Los Angeles Times. We have also appeared on several radio and television stations such as FOX, BRAVO, NBC, ABC, and CBS and have been profiled in the international press in Canada, Germany, Greece, Ireland, and the United Kingdom. We have represented some of today's most well known business owners, celebrities, and professional athletes.

We have been working around the clock to improve our Firm's online presence to ensure that you receive the most up-to-date information on how to protect everything you own from everyone, every time. We will be constantly updating our social media with new cutting edge information, just click the links above to follow us.

If you know a colleague, friend, family member or anyone that would benefit from this important information, please have them contact us to be added to our newsletter!

Best Wishes,

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Asset Protection Attorneys

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