NF96-294 Tenants in Common Ownership as an Estate Planning Tool

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NebFact

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Tenants in Common Ownership as an Estate Planning Tool

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This is one in a series of **NebFacts** providing information on the use of estate planning "tools" — mechanisms that can be used in attaining desired estate planning outcomes. Titles in the series are listed following the last narrative section of each document. Reading the documents in this series will improve your understanding of estate planning tools and alternatives, and make it easier to communicate with your attorney, accountant, and other helpers when your estate plan is prepared.

Your need for legal and tax advice: While the information contained in this document is thought to be accurate, it should not be used as a substitute for legal advice on matters related to business organization, taxation, estate planning, gifting of assets, life insurance, or other business and financial management matters. Consult with your legal and tax advisers before making decisions.

What is "tenants in common" ownership?

Tenants in common is a way of sharing ownership of property among two or more persons in which each tenant holds an undivided interest in the property, and the tenants may own interests of differing sizes. Tenants in common ownership may be established through a will, deed, or other document of title. Many, perhaps most, tenants in common tenure arrangements are created through inheritance in which the testator's (decedent's) will leaves property to intended heirs with or without specifying the size of interest that each is to receive.

A tenants in common ownership interest can be purchased, sold, gifted, bequeathed by will, or inherited, and is subject to property taxes, gift tax, estate and inheritance taxes in the same manner as any property held in fee simple (single) ownership. Upon the death of a tenant in common, his or her interest in the property passes through inheritance as directed in the will or other estate planning documentation and **does not** divide among the other owners as there is no right of survivorship — an important difference from joint tenancy ownership.

Each tenant has unrestricted rights of access to the property subject to the equivalent rights of the other tenants. Each tenant in common can petition for and secure a partition of the property (division of the property) at any time. The partition usually will result in the petitioner being granted exclusive ownership of a portion of the property the court views as equivalent to his or her previous undivided interest. Or, the judge may order that the property be sold and the net proceeds divided among the tenants in the same proportion as their respective ownership interests.

When a tenants in common ownership arrangement is created through inheritance, the heirs may not agree on how the property should be put to productive use. They may disagree on whether it should be retained or sold. If one family member is manager of the family business and the business property is placed in tenants in common ownership through an estate settlement, the desire of other heirs to liquidate their respective interests in the common property may create severe financial problems for the manager and the business unit. Purchasing the interests of the other tenants can cause long-term financial difficulty for the purchaser and can result in debts that undermine long-run viability of the business. However, given the right of any tenant to require division of the property, the manager may need to choose between purchasing the ownership interests of the other tenants or closing the business.

At the same time, it's important to recognize that there are many examples of successful property ownership under tenants in common arrangements. Some are established by gift or inheritance, others by the decision of two or more persons to purchase property that they elect to hold in tenants in common ownership. The key ingredient in these successes often is the ability of the tenants to agree on continued ownership and on how the joint tenancy property is to be used.

For estate planning purposes, tenants in common ownership can be used in combination with other estate planning tools to avoid or reduce federal estate tax liabilities. For example, if two or more persons hold property as tenants in common, each can use a will or trust or other estate planning tool to transmit his or her undivided interest to members of the next generation. In many cases, doing so will make it possible to minimize or avoid federal estate taxes on each person's estate — the respective ownership interests are not combined upon the death of a tenant. When the net value of the ownership interests totals to more than $600,000, the ability to transmit tenants in common ownership interests separately can be an important factor in avoiding estate and inheritance taxes.

Because the ability of tenants to agree upon outcomes and constructively utilize their tenants in common property is so important, it's suggested that you be cautious in your use of tenants in common property ownership.

Glossary

Intangible property
: Property that only represents real value such as bonds, stock certificates, promissory notes, certificates of deposit, bank accounts, contracts, leases, and other similar items.

Joint tenancy
: A form of joint asset ownership by two or more persons in which each person has an equal undivided ownership interest that passes directly to the surviving joint tenant(s) upon the death of any joint tenant. Real estate held in joint tenancy does not pass through probate following the death of a person with an ownership interest. Personal property such as fixtures and equipment, inventories, or vehicles held in joint tenancy does not pass through probate if the right of survivorship is stated in the title to the property. Any joint tenant can petition the court and compel partition of a joint tenancy asset.

Partition

The judicial separation of the respective interests in property of joint owners or tenants in common so each may take possession, enjoy, and control his or her share of the property.

Tangible property

Property that is capable of being perceived by the senses — generally, tangible property is real estate, personal property, or moveable property that has value of its own and is not merely a representation of real value. Land, machinery, buildings, business equipment, inventories, homes, and furnishings are examples of tangible property.

Tenants in common

A form of asset ownership in which two or more persons have an undivided interest in the asset, where the ownership shares are not required to be equal, and where ownership interests can be inherited.

Undivided interest

The interest or right in property owned by each joint tenant or tenant in common. Each tenant has equal right to use and enjoy the entire property. Unless an agreement to the contrary exists, each tenant is entitled to an income share proportional to his or her ownership interest. If the property is sold, the sale proceeds are shared among tenants in proportion to the ownership shares held by each tenant.

Documents in This Series:

- NF 95-236, *Nebraska Inheritance and Estate Taxes*
- NF 96-291, *Intestate Succession As An Estate Planning Tool*
- NF 96-292, *A Will As An Estate Planning Tool*
- NF 96-293, *Joint Tenancy As An Estate Planning Tool*
- NF 96-295, *A Trust As An Estate Planning Tool*
- NF 96-296, *Gifting As An Estate Planning Tool*
- NF 96-297, *Life Insurance As An Estate Planning Tool*
- NF 96-298, *Charitable Remainder Trusts and Charitable Annuities As Estate Planning Tools*
- NF 96-299, *Estate Planning Glossary*

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