BEWARE:
The Hazards of Joint Ownership

Helping your clients plan for the ultimate disposition of their assets can be complicated, potentially opening some sensitive family subjects. However, providing this important estate planning guidance is bound to strengthen your business relationship, ensuring that your client's assets ultimately go where intended.

The estate planning process should start with a review of jointly held assets. Joint ownership is the most popular form of registering assets because it is so straightforward and simple. "If anything happens to me, you will inherit immediately, becoming sole owner at my death – no delays; no taxes, or estate complications".

But, what are the hazards of joint ownership? In short, joint ownership can potentially botch ultimate asset disposition to intended heirs in the event of any number of common family occurrences, such as divorce, second marriage, children from multiple marriages, adoption and blended families of all types. To assure that assets flow to your intended beneficiaries, it is important to understand the different types of ownership and how to employ the appropriate disposition strategies.
There are basically four types of ownership: joint; single name; contractual and community (similar to joint ownership between spouses in 'community property' states). Jointly held assets pass to the survivor immediately at the first death (becoming single name assets of the surviving joint owner). The disposition of single name assets is controlled by will. Contractual assets pass to named beneficiaries (in the contract) such as annuities, life insurance policies and employee benefit accounts - IRA's, 401k's, 403b's, etc.

Perhaps the easiest way to express the dynamics (and consequences) of different types of ownership is by example. Jim and Sara are married and have two children. Having complete trust in each other, they own most of their assets jointly – home, cars, bank and brokerage accounts, etc. They have simple 'I love you' wills, naming each other sole beneficiary of any single name property (such as Jim's business). They also have contractual assets - an IRA, Jim's 401k at work and life insurance policies naming each other as beneficiary.

In this case, if Jim dies and Sara later remarries, Jim's children can become disinherited if Sara re-registers all her assets from her first marriage in joint name with her new husband, Joe. Joe becomes sole owner of all joint assets in the event of Sara's untimely death. If Joe's will names the children of his first marriage as his sole beneficiaries, Jim's children are effectively disinherited unless Joe revises his will to include them or Sara has the presence of mind to maintain all assets from her first marriage in her name alone and revises her will, naming her (and Jim's) children as beneficiaries.

In any case, Jim is placing his total trust in Sara to first maintain assets from their marriage in her own name, and after his death to make the proper revisions in her will, specifically providing for their children.

A better plan to avoid unintentionally disinheriting their children would be for Jim and Sara to have only their 'convenience assets' such as home, vehicles, checking and small savings account in joint name. In the event of Jim's death, those convenience assets would be immediately available, enabling Sara to carry on her lifestyle – uninterrupted through a transition period. The more significant assets – the business, brokerage and larger savings accounts would be in single names – controlled by their wills. The contractual assets – life insurance, IRA's and 401k would name a testamentary trust created by the will as beneficiary. The trust would provide income and principal as needed to Sara for life with the remainder pouring out to the children equally (at appropriate ages) at the Sara's death.

Also, a trust is imperative if Jim wants his business to continue running as a family operating concern (perhaps until one of the children want to become involved). Or, if the business is to be sold, the trustee can professionally manage the sale, increasing the probabilities of achieving a maximum selling price and smooth transition to the new owner.

Jim and Sara may also be uncomfortable leaving a lump sum inheritance to their children (or one particular child) for any reason. A trust can be a dynamic resolution to family challenges such as physical or mental disability, financial irresponsibility, or simply a concern that receiving significant assets might be a disincentive for the children pursuing their own career dreams. A living or inter-vivos trust (as opposed to a testamentary trust created by the will) could also be employed to own the life insurance policies to completely avoid estate tax on the policy proceeds and save on probate costs (on assets placed in the trust). Bottom line – a trust, however created can be an important, stabilizing estate planning tool, providing maximum control over asset distribution to intended heirs.

Avoiding overuse of jointly held assets and establishing a trust (under will or during life) enables ultimate flexibility in providing for both spouse and children. It's important to initiate the estate planning conversation with clients. Clients entrust their financial wellbeing to their advisors and estate planning is a critical part of achieving overall financial health.

Start the conversation by asking about joint property and if your client has an up to date will. If they have a will, ask them if the attorney who prepared their will did other estate planning as well. If they do not have a will - refer them to a respected estate planning attorney with an offer of assistance and plan review. State laws differ widely so it’s essential that a qualified estate planning attorney be involved in the planning process.