


Co-ownership trusts where trustees & beneficiaries are same persons. Do trustees own assets in joint tenancy or tenancy in common?

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Here is a good article on [Joint Tenancy versus Tenancy in Common](#)

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Why place Tenancy in Common owned assets into a trust

i). Why have a joint account

- A surviving partner is likely to go through a protracted probate or lengthy Will process upon the death of a single account owner. Access to the account when emergency liquidity is needed could take months, causing stress and uncertainty.
- A joint account seems to be a solution to alleviate the probate delay. However, a bequeathal of the joint account to the surviving owner can be subject to inheritance disputes by family and business partners.

ii). Ways multiple people can jointly own assets

1. Joint Tenancy

- The owners hold a combined 100% undivided interest. Means that each tenant owns the entire property rather than just a portion of it. Requires:
 - (a) Right of survivorship: If one owner of a Joint Tenancy dies, their interest goes to the surviving owners.
 - (b) Needs four unities, the state of being united, of Joint Tenancy: interest i, time ii, possession iii and title iv.

2. Tenancy in Common:

- Equal or unequal undivided fractional ownership. Means they own a separate share but can access and use all the property. If one of the owners dies their share is conveyed to their heirs, not necessarily the surviving owners. The only unity required is possessioniii.

There is no element of survivorship with Tenancy in Common

iii). Why Joint bank accounts are held as Tenancy in Common

The unities of Joint Tenancy do not apply to a bank account:

- A bank account is a 'chose in action', which is where personal rights over an asset that can only be enforced by action, and not by taking physical possession. Mainly this is debt, like a cash balance at a bank.
- It is difficult here, to conceptualize the operation of the four Joint Tenancy unities.
- Additionally, a tenant can eliminate the right of survivorship: If one of the holders of a joint account wishes to eliminate the right of survivorship, they simply bring the account to an end by draining it to zero.

Example of jointly owned assets are held as Tenancy in Common


- Say, as a minder, one of several children opens a joint bank account with their elderly parent.
- When the parent dies, it is difficult to know whether the parent intended for the entire account to pass to only this child.
- There should be an indication which party owns how much share of the account, and the ultimate beneficiaries of each share upon death.
- This then is equivalent to Tenancy in Common.

ownership Express Trusts

iv). Reasons to place a Tenancy in Common held bank account into a trust

- Estate Planning: avoids inheritance disputes
- Tenancy in Common held Joint bank accounts may be subject to dispute when one signatory dies, by say adult children, siblings, or partners.
- Avoid conflict, stress, uncertainty, disputes, and costly judicial remedy through Courts by placing the joint bank account into a trust.
- Document which party owns which share of the account, and the ultimate beneficiaries of each share upon death.

=====END=====

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