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Entail and Error

Estate Planning Lessons from Jane Austen

It is a truth universally acknowledged, that a family in possession of property, must be in want of a good estate plan.

Jane Austen’s *Pride and Prejudice* has captivated readers for over two hundred years. The romantic entanglement between a spirited young woman and a brooding nobleman is as moving today as it was in the Regency era. But what many modern readers overlook is that the entire plot rests not just on love and wit—but on property law.

The story begins at Longbourn, the modest estate of the Bennet family. The bemused Mr. Bennet and the blustering Mrs. Bennet are deeply concerned about the future of their five daughters. Why? Because Longbourn is not theirs to pass on. Upon Mr. Bennet’s death, the estate is set to be inherited by a distant male cousin—Mr. Collins—due to a legal arrangement known as an entail.

This looming inheritance issue is not just a background detail; it drives the entire narrative. The fear that the Bennet women could be turned out of their home the moment Mr. Bennet dies is an ever-present source of anxiety—particularly for Mrs. Bennet and her “poor nerves.” Her urgency in marrying off her daughters isn't mere social ambition—it’s a matter of long-term survival.

So why doesn’t Mr. Bennet simply rewrite his will? Why not leave the estate to his wife or daughters? After all, English literature abounds with stories of rich uncles generously bestowing wealth on unsuspecting heirs (consider Great Expectations). Was Mr. Bennet too proud? His lawyer too inflexible? Or were women simply unable to own land?

The answer lies in the legal structure of a “fee tail,” or “entailment.” Under this arrangement, the estate is tied to a line of succession, typically passing only through male heirs. Each heir holds a limited interest—usually a life estate—meaning they own the property only for the duration of their lifetime. They cannot sell it outright, and they cannot redirect the inheritance outside the designated bloodline. Once the life estate ends, ownership automatically passes to the next eligible heir.

This legal mechanism—once common for preserving family wealth—left families like the Bennets vulnerable when no sons were born. While entailments are not recognized under modern U.S. law, similar limited property interests still exist today. Among the most common are life estates and joint tenancy with right of survivorship.

Real estate can be owned in different ways: concurrently, where two or more people share ownership at the same time, or consecutively, where one person holds ownership for a time and another follows. Each form of ownership has distinct advantages and disadvantages, but a key benefit of both life estates and joint tenancy is that they can allow property to pass outside of probate and, in certain circumstances, protect the property from creditors' claims.

LIFE ESTATES: OWNERSHIP MEASURED BY A LIFETIME

A life estate grants someone ownership of real estate for the duration of their life—whether five days or fifty years. Alongside the *life estate*, a secondary future interest is created: the *remainder interest*. As the name suggests, the remainderman receives ownership of the property after the life estate ends—i.e., when the life tenant passes away.

The remainderman has no possessory rights during the life tenant's lifetime. That means they cannot enter the property, alter it, or otherwise exercise control. Until the life tenant dies, the remainderman essentially has a future promise of ownership but no current rights of use or possession.

ADVANTAGES OF A LIFE ESTATE

- **Full Control**: The life tenant retains full control of the property during their lifetime.
- **Possession**: No one else has a legal right to occupy or use the land.
- **Bypasses Probate**: Upon death, the property passes automatically to the remainderman—no probate required.
- **Limited Creditor Protection**: Because the decedent's interest ends at death, creditors' liens against the estate generally do not attach to the property.
- **Stepped-Up Basis**: The remainderman receives what is called a "stepped-up basis" for capital gains tax—decreased tax burden if the real estate is subsequently sold.

DISADVANTAGES TO CONSIDER

However, life estates do come with limitations. The life tenant cannot sell or transfer full ownership of the property without the remainderman's consent. If the life tenant deeds the property without the remainderman's participation, the buyer only receives the life estate—an interest that ends upon the original life tenant's death.

The life tenant and remaindermen can sell together, but proceeds must be split according to the value of each party's interest. The value of a life estate diminishes with time, as the term is measured by a shrinking lifespan, while the remainder interest grows more valuable. As a result, the life tenant may receive a smaller share of the sale proceeds, while the remainderman could receive a disproportionately large share.

Joint Tenancy with Right of Survivorship (JTWROS): Simple, but Not Always Flexible

Another common method of avoiding probate is *Joint Tenancy with Right of Survivorship*, often abbreviated as JTWROS. In this arrangement, two or more people own the property simultaneously. Upon the death of one joint tenant, the decedent's interest terminates, leaving the surviving tenant(s) as the sole owner(s), bypassing probate entirely.

This automatic transfer is the core feature of JTWROS—and its greatest advantage. It is frequently used between spouses, siblings, or parents and children to ensure a smooth transition of property ownership.

Advantages of JTWROS

- **Avoids Probate**: When one owner dies, the surviving joint owner(s) is/are the immediate and sole owner(s).
- **Simple and Cost-Effective**: No trust document is needed and no court process is required to transfer ownership.
- **Limited Creditor Protection**: The deceased's share passes outside the probate estate, limiting exposure to certain creditors.

Disadvantages of JTWROS

- **Inflexibility**: While each joint tenant can transfer their own share independently, selling or mortgaging the entire property requires all owners to agree. If any owner refuses, the others must go to court to force a sale, which can cause delays and complications.
- **No Control Over Final Distribution**: Unless the joint owners take action during their lives, the last surviving joint tenant receives full ownership and can dispose of the property however he or she wishes. This may frustrate prior estate planning goals.
- **Risk of Unintended Co-Ownership**: Adding a child or relative to a deed as a joint tenant may expose the property to their creditors, lawsuits, or even divorce settlements.

- **Partial Stepped-Up Basis:** The joint owners only receive a stepped-up basis for the value of the interest they do not own, rather than for the entire value, which would be the case if inherited via a probate proceeding or a life estate.

REVOCABLE LIVING TRUSTS: FLEXIBILITY AND CONTROL

For clients seeking both control and probate avoidance, a Revocable Living Trust is often the most complete solution. Unlike life estates or JTWROS, a revocable trust offers a greater degree of flexibility and privacy—especially in multi-generational planning.

KEY BENEFITS OF A REVOCABLE LIVING TRUST

- **Probate Avoidance:** The assets the trust owns do <u>NOT</u> go through probate.
- **Full Control**: The person who creates the trust (the "grantor") typically serves as both trustee and beneficiary during their lifetime, meaning they can buy, sell, or use the property without restriction.
- **Flexible Distribution**: The grantor can determine exactly how and when assets are distributed to heirs, which is especially helpful in blended families or situations with spendthrift children (children who cannot manage their own funds).
- **Privacy Protection**: Living trusts are not part of any public record.
- **Maintenance of Stepped-Up Basis**: Assets in a revocable trust receive a step-up in basis at the grantor's death, helping minimize capital gains tax.

While trusts do require more up-front planning and cost, they often prevent significant legal and emotional expense for heirs later on.

TYING IT ALL TOGETHER: PROPERTY LAW IN *PRIDE AND PREJUDICE*

In *Pride and Prejudice*, we see that the Bennet family's dilemma stems not from heartless patriarchs or a lack of affection, but from the legal structure of entailed property—a rigid, inflexible form of ownership that leaves no room for discretion or planning. Mr. Bennet could not simply rewrite his will or hand Longbourn to his daughters; the law of property would not allow it.

Modern families are not bound by such legal chains, but similar problems can arise when real estate is titled without careful planning. Whether through life estates, joint tenancy, or outdated wills, many families unintentionally recreate Longbourn's bind—leaving heirs exposed, entangled, or unable to act in critical moments.

Estate planning offers a way out of the drawing-room drama. By understanding the strengths and weaknesses of each ownership structure—and by considering tools like revocable trusts—families can preserve their legacy, provide for loved ones, and avoid the heartache that plagued the Bennet household.

After all, as Mrs. Bennet might put it, *“It is a truth universally acknowledged, that a family in possession of property, must be in want of a good estate plan.”*