

## Florida Entireties Property

**Quick-Take:** Sometimes we too quickly assume that assets owned by spouses will automatically be protected from judgment creditor claims of one spouse.

**Background:** Tenants-by-the-entireties provides creditor protection if a judgment is entered against one spouse. [MCL 600.6023a] However, federal tax liens and bankruptcy proceedings may not recognize this entireties exemption. Often there is some confusion whether entireties protection is available, even under state laws, when the historic *unities* of title are applied. This occurs when one spouse adds his/her spouse's name to an asset that was individually owned prior to the marriage.

**Entireties Unities:** At common law, tenants-by-the-entireties between spouses required several 'unities' along with the fact of their marriage. Normally there are (were) six *unities*: (i) unity of possession (ownership and control); (ii) unity of interest (i.e., each spouse has identical interests); (iii) unity of title (the interests originated in the same instrument); (iv) unity of time (the joint ownership commenced simultaneously); (v) right of survivorship; and (vi) unity of marriage, which is interpreted to mean that the individuals were married at the time the property became titled in their joint names. Thus, a tenants-by-the-entireties is basically a joint tenancy plus marriage. The Florida Supreme Court just issued an important decision with regard to entireties protection when not all of these *unities* existed.

***Loumpos v Dove Investment Corporation, Florida Supreme Court No. SC2024-1256 (December 11, 2025)***

**Facts:** Linda had a default judgment entered against her in 2003. Linda later married Peter. Peter opened a bank account in his name alone in 2017, using his wages to fund the account. Months later both Linda and Peter signed signature cards to change Peter's bank account to be owned by them as tenants-by-the-entireties. Linda's judgment creditor later attempted to garnish the joint bank account to satisfy its default judgment against Linda. Linda claimed the tenants-by-the-entireties exemption, asserting that the joint account was exempt from execution by her judgment creditor. The judgment creditor responded to Linda's defense that the joint bank account did not qualify as tenants-by-the-entireties

property because Linda's name was not on the bank account at its inception, which violated the common law requirement of a *unity of time and title*.

**Trial Court:** The Trial Court rejected Linda's entirety exception claim. The court found that the traditional, common law, *unities* remained as conditions, even after Florida adopted its joint bank account statute which provided in part: "*Any deposit or account made in the name of two persons who are husband wife shall be considered a tenancy by the entirety unless otherwise specified in writing.*" Linda's name was not on the joint account when it first was opened, so that the *unity of time and title* was missing

**Appeals Court:** The Florida Court of Appeals affirmed the trial court's decision that Linda's interest in the entirety's owned property was available to satisfy her judgment creditor. Soon after, yet another Florida Court of Appeals, in a different appellate district, reached the opposite conclusion. With this conflict in appellate decisions the Florida Supreme Court agreed to accept jurisdiction to resolve this conflict in the Court of Appeals.

**Florida Supreme Court:** This Court directly addressed the question of whether accounts initially opened by one spouse and later converted to joint ownership with a spouse would be considered to be held as tenants-by-the-entireties. The technical question asked was whether the *unities* required to establish ownership as a tenancy-by-the-entireties existed.

The Court held that the Florida statute that authorizes a joint spousal bank account is held as tenants-by-the-entireties even if the account was originally established by one spouse. Therefore, Linda's judgment creditor could not access the funds in the joint account since it did not have a judgment against Peter.

The Court did not condition its holding on the source of funds. Even though only Peter's wages funded the joint account, the Court held the account to be entirety property. This conclusion is consistent with another Florida statute that treats property-titled entirety property as immune from creditors of one spouse regardless of which spouse contributed the funds.

**Observations:** Married couples can convert individually-owned accounts to entireties property by executing new a signature card designating the account as tenants-by-the-entireties property.

The *unity of time and title* are no longer barriers to establish the entirety ownership in Florida regarding a joint account held by spouses.

The Florida statute's exception language 'unless otherwise specified in writing' should, however, be directly addressed when opening a joint account. Because of that statutory exception language, the signature card used to open the joint account needs to expressly designate 'tenancy by the entirety' while avoiding other, more ambiguous, language such as 'joint tenancy with rights of survivorship.' Moreover, the new signature card needs to be signed by both spouses. If possible, the joint account's title used by the bank or credit union should confirm its entireties ownership, e.g., "Peter and Linda Laumpos, as tenants by the entirety."

While the Florida joint bank account statute attaches a presumption of entireties ownership to bank accounts held by spouses, like Michigan, Florida's law on entireties ownership continues to be vague as to what other types of assets can be held by the entireties, e.g., tangible personal property, and thus protected from one spouse's judgment creditor.

For example, Michigan's 1927 entireties statute [MCL 557.151] provides for the entireties ownership by husband and wife in certain classes of personal property with rights of survivorship; the statute contains a litany of assets that are thus protected from one spouse's judgment creditors, e.g., bonds, stock certificates, and 'other evidences of indebtedness' payable to a husband and wife. However, that 1927 statute has been interpreted by the Michigan Supreme Court over the years to only protect those assets that are specifically identified in the statute. As such, there are still lingering questions about which assets titled in the names of a husband and wife will be protected as tenants-by-the-entireties, since assets that are owned as joint tenants with full rights of survivorship (not entireties) can be exposed to creditor claims..

**Conclusion:** We tend to assume that any assets jointly owned by a husband and wife automatically are protected by the common law tenants-by-the-entireties classification. That is not always the case. In some states, the common law *unities* are still important. Florida and Michigan have bank account statutes that specifically presume that an account owned by spouses is owned by the entireties, but that is a legal presumption that can be rebutted. Also, by expressly noting the entireties presumption for a joint bank account held by spouses, that also implies that other assets owned by spouses may not be protected by entireties classification in the absence of a specific statute that accords that protection from the creditor claims of one spouse. Maybe it time, if Michigan's Legislature decides to go to work, to update its 1927 entireties statute.

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