

The Available Avanti

IN "TV OR NOT TV," the first of the "Classic 39" episodes of *The Honeymooners*, Alice Kramden demands husband Ralph jazz up their dreary apartment with a television. Instead of simply paying for a TV himself, Ralph convinces his malleable (no doubt from a career of immersion in the sewer) friend and upstairs neighbor, Ed Norton, to go halves on one with him—to be kept in the Kramden apartment, of course. Mayhem and hilarity ensue, due to the men's differing preferences in program selection, viewing and sleeping schedules, and sound volume tolerance.

But shared ownership of a valuable item need not necessarily be a disaster, in the right situation and with appropriate planning.

If you are considering sharing ownership of a collector car, it may be best to have the terms of your agreement spelled out in a written document signed by all the parties involved. Putting things down on paper—memorializing them—can help avoid (or at least help resolve) disagreements down the road. The law provides a variety of possible shared ownership arrangements that two (or more) parties can consider.

For example, a "joint tenancy" is a type of shared ownership where each owner has an undivided interest in the property ("undivided" means an interest in the property as a whole). Usually, the law requires that the shares be equal. This type of ownership creates a right of survivorship—meaning that when one owner dies, the other owner or owners automatically absorb the deceased owner's share—regardless of what the deceased owner's will might say.

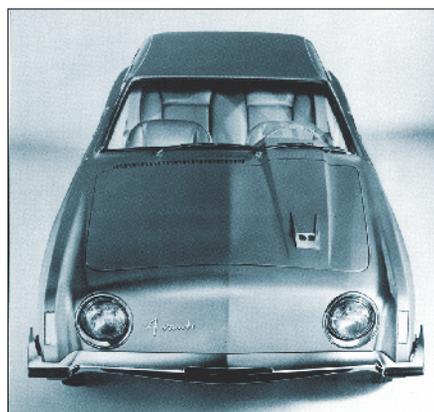
In a "tenancy in common," by contrast, the shares can be of unequal sizes, and the shares can be freely sold or given to others both during life and by a will. In some states, the law presumes that when two people own property, they do so as tenants in common unless they have specifically agreed otherwise in writing.

Another example is "tenancy by the entirety," which is recognized in most states, but is generally only available to married couples (although in some states, the scope of the relationships encompassed is broadening). There is a right of survivorship, and an owner's interest cannot be transferred without the consent of the other owner. Creditors of one owner cannot force a sale of the property to collect on a debt.

These are just some brief examples. Where circumstances warrant, you should consider consulting a lawyer to help set up a particular shared ownership arrangement.

Shared ownership of a collector car was discussed in the U.S. Bankruptcy Court for the Eastern District of Tennessee's July 22, 2011, opinion in *In re McKain*.

According to the court, Mr. McKain filed for bankruptcy. In his papers, McKain claimed that a 1963 Studebaker Avanti, valued at \$20,000, was exempt from the proceeding (that is, it was protected from being taken and sold by the bankruptcy trustee to pay off debts). He said it was exempt because it was jointly owned by him and his wife as tenants by the entirety.



The bankruptcy trustee disagreed. He argued that McKain and his wife held the Avanti merely as joint tenants, rather than as tenants by the entirety, and therefore the car was not exempt from being taken and sold. The court agreed with the trustee, and ruled against McKain on that point.

The court noted that, under the federal Bankruptcy Code, a debtor (McKain) may exempt any interest in property in which the debtor had, when the bankruptcy case was started, an interest as a tenant by the entirety or joint tenant to the extent that such interest was protected from being taken in litigation under applicable state law.

It further noted that, under Virginia law, property held as tenants by the entirety, although subject to the joint debts of the spouses (those debts they incur together), was "immune from the claims of creditors of one of the spouses alone."

But Virginia law was not as protective of property held only as joint tenants. "[A]

joint tenant's interest in property, even if held with the right of survivorship, is generally subject to the claims of his individual creditors... The jointly held property can be partitioned [divided], and the joint tenant's interest sold to satisfy claims against him... Consequently, a debtor's interest as a joint tenant is not exempt from his bankruptcy estate."

The court noted that the debts in the case appeared to be those of McKain individually, and not joint debts of the couple. Given that, the case turned on whether the McKains held the Avanti as tenants by the entirety (as Mr. McKain argued, in which case it would be protected), or merely as joint tenants (as the trustee argued, in which case his share could be sold to pay creditors).

Ultimately, the court rejected McKain's claim that the Avanti was owned by him and his wife as tenants by the entirety. In doing so, it observed that Virginia state law did not permit the creation of a tenancy by the entirety in a motor vehicle. Thus, in Virginia, "motor vehicles cannot be owned by husband and wife as tenants by the entirety."

It further concluded that the facts did not support McKain's claim. "This court is persuaded that the Debtor and his wife do not hold the Studebaker Avanti automobile as tenants by the entirety. The certificate of title does not mention tenancy by the entirety or otherwise refer to the couple as husband and wife... At a minimum, the intent to create a tenancy by the entirety must be evident in some fashion. No such intent is evidenced with respect to the Studebaker Avanti. The mere fact that the Debtor and his wife both use the Studebaker, or that joint property was used to purchase the automobile, does not supply the requisite intent, since such use is also consistent with mere joint ownership. Accordingly, the Trustee's objection to the Debtor's claimed exemption in the Studebaker Avanti will be sustained."

Thus, the court ruled that the bankruptcy trustee could sell McKain's interest in the Avanti to pay off his debts.

There is an epilogue to this story. The court's file on the McKain case includes a subsequent "Order Approving Private Sale" filed February 10, 2012. It granted the trustee's motion, to which there was no objection, to sell Mr. McKain's one-half interest in the Avanti for \$7,500—to Mrs. McKain. 🐞