

Planning Matters

CONTEMPLATING TRANSFERRING ASSETS TO JOINT TENANCY? THINK CAREFULLY

It may appear on the face of it that registration of assets into joint tenancy with right of survivorship is a handy way to avoid probate fees. However, it can cause more complication and issues than first imagined.

Between spouses, holding assets in joint tenancy can be a logical and natural thing to do. But the marriage or common-law relationship in a second or third arrangement with children from previous relationships on one or both sides can be problematic. Consider the following scenario:

"Mary and Fred were happily married for many years and raised three children. Fred died tragically soon after retirement. Essentially there was no estate to administer because Mary was the beneficiary under the life insurance, RSPs, and their investment account was held jointly with right of survivorship. Even their home was held in joint tenancy. Time passed and Mary took a cruise to the Caribbean. On that cruise she met a "Mr. Charming". Their relationship blossomed and they were eventually married. It was a second marriage for both. Did Mary and Mr. Charming think about a pre-nuptial agreement? Maybe. Sadly Mary's health declined over the next couple of years and she became more and more dependent on Mr. Charming. Mr. Charming suggested that it might be a good idea to sell the property and move to a more manageable place and invest whatever funds were left. So Mary and Fred's family home sold for \$2 million to a developer. A condominium was purchased for \$500,000 and was registered in joint names. The balance of \$1.5 million was invested in joint names – which seemed like a good idea at the time. Being Mary's principal residence there was no capital gains to be applied on the sale.

Mary's needs increased and the portfolio and RIF held in her name alone were gradually depleting. When Mary died, her family soon discovered that her estate held only \$100,000 and the small balance of the RIF. Where was the estate their Dad had amassed and what about the property? Whoops - Mr. Charming was now the legal holder of the investment portfolio and the condo - and Mr. Charming's Will left everything to his daughter from a previous marriage."

Mr. Charming could put matters right but what if he doesn't want to or can't? How could this have been avoided?

In another scenario

"Elsie is a widow with two children, a son and daughter. Son, Jon, lived close by but her daughter Ivy lived abroad. While she visited regularly she was not easily placed to look after Elsie's affairs with her brother. Elsie, as she aged, thought it would be a good idea to transfer ownership of the family home into joint tenancy with her son in order to avoid "expensive fees" to her estate. The children got along and she did not anticipate any problems with the division of her assets when she died. What Elsie did not consider was the possibility of:

- A. *Her son becoming bankrupt when his business failed and creditors attaching a claim to her home;*
- B. *The possibility that Jon's rocky marriage was heading for a break-up and that his interest in Elsie's house could be attached to a claim under the divorce settlement;*

- C. *That when the property was transferred to joint-tenancy with Jon, the clock for capital gains began ticking on the value of Jon's share;*
- D. *Loss of control over the property in the event Elsie decides to sell to move elsewhere. Jon will need to agree to the sale.*

Fortunately items A, B and D did not happen during Elsie's lifetime, but the tax issue remained. The property in joint tenancy flowed from Elsie to Jon upon her death, but before Jon could sell the house and distribute the proceeds between his sister and himself, he died. Unfortunately, Jon's Will left his entire estate to his estranged spouse who was not inclined to recognize any claim by Jon's sister, Ivy, to the property..... a lengthy and expensive court battle ensued."

So in Elsie's case, her thought was to avoid probate fees on her estate of approximately 1.4% in B.C., but unwittingly set in place a course of events that ended up excluding her

daughter, and costing far more in legal and court fees to try to put matters right.

There are reasons why joint tenancy can be useful, but is it a good idea to avoid probate fees and the estate administration process? Be sure to obtain good sound legal advice before taking any steps - the ramifications, while maybe not apparent at the outset, can be impactful. Joint tenancy can be a good estate planning tool but tread carefully. There are planning tools that can be implemented to avoid situations similar to those illustrated above and to protect assets for spouses, second spouses and children from first and second marriages. As an example, depending on the situation, beneficiaries involved, and any legal and tax benefits/consequences, a trust can be crafted. For every family situation - it has been said - a trust can be created to suit the scenario, either during one's lifetime by an inter-vivos trust, or after death through a well crafted Will. Such documents will require the advice and services of a qualified professional.

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