

## Joint Ownership as an Estate Planning Technique Between Parents and Children

Recently, a number of our clients have asked, “Should I put my adult child(ren) on title with our home, to avoid probate fees and simplify our estate planning?”. “What about the family cottage?” “Other assets in the family?”

On the surface this may be a viable strategy, and it will allow the asset to change hands without becoming part of the estate or subject to probate fees. That is on the surface however, and there may be far more problematic concerns lying below the surface worthy of consideration. The risks associated with these concerns should be compared to the cost of probate, which is a maximum of 1.4% in B.C. The following issues are some that may need to be considered before taking this course of action;

*Deemed Disposition:* When another individual is added to the title of a property, the share they are receiving is considered a deemed disposition by the previous owner and could be subject to tax. This is an issue often over-looked. For example, if the property involved is a family cottage which has risen significantly in value, the share transferred would be subject to capital gains tax. This would result in tax payable of approximately 22%. In many cases other assets would have to be sold in order to pay those taxes. If title is not transferred until death, the tax is still payable, but it may be many years later, and there may be life insurance in place to provide the funds needed for the tax.

*Creditors:* Once another individual is added to the legal title of a property, that property can be included in their assets if they are subject to a legal settlement. This may be of particular concern if the child being included on title is a business owner or professional as those occupations may

be more likely to be involved in legal settlements, but settlement could also rise from something as simple as a car accident. This creates another risk the original owner may have not considered when looking for avenues to avoid a relatively small probate fee.

*Consent:* Another issue often over-looked when adding another party to the title of a property is the fact they will be required to grant their agreement before any transaction can take place. Whether it is the sale or even re-financing of a property, a child added to the title will need to be included. This may result in annoying delays for obtaining necessary signatures, or disagreement about the transaction itself. A child may put their self-interest ahead of the wishes and needs of the parent.

*Matrimonial Property:* With divorce rates in this country at nearly 50% of all marriages, it is only prudent to consider the effect a divorce may have on any strategy being considered. In the event the child added to title later suffers a marital breakdown, their share in the parent’s property will be included in the division of marital property. Can you imagine being forced to buy back your own home from your child’s ex-spouse? Once again this is a cost and aggravation which might easily exceed the trouble of probate.

*Principal Residence:* The tax exemption available on a principal residence is a valuable component of Canada’s Income Tax Act. It allows an individual to avoid capital gains tax being applied to their principal residence at the time of sale, or deemed disposition at the time of death. Each individual is however limited to one principal residence. If a child is added to the title of the family home, and that child already has a

home of their own, the future growth in value of the family home may be subject to tax. If the child is not a homeowner this may provide a useful tax planning opportunity but one that requires careful consideration.

*Family Dissension:* Once title is changed, the new owner has all the rights and privileges that go with ownership. That includes the right to do what they wish with their share. This may cause particular concern when other siblings are involved. Upon the last parent's death, a property owned jointly with one sibling will transfer directly to that sibling. While there may be other assets bequeathed to the other siblings in the Will, they may be subject to taxes and fees (such as probate and legal fees). This may result in an inequitable division of assets not intended by the parents. Since the child who owns the home already has title to it, there may be little or no motivation for them to share in any costs payable by the estate.

While using joint ownership may be appropriate in some cases, it is a decision that should not be made without careful consideration. For more information about this topic and others, please visit our website at [http://www.arbutusfinancial.com/elibrary\\_ret.html#JO](http://www.arbutusfinancial.com/elibrary_ret.html#JO).

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