

Joint Ownership of Property: Pros & Cons



Married spouses commonly hold property jointly with right of survivorship. In certain circumstances, there are several benefits to this ownership structure. For example:

- Each spouse has the ability to manage the property without written consent of the other.
- Upon the first death, the surviving spouse automatically owns 100% of the property.
- Probate tax is payable on the value of the property only once (i.e. at the time of the second death).

However, joint ownership for couples may not be appropriate if one of the spouses wishes to benefit children of a previous relationship, or other family members, friends, charities or other beneficiaries. In addition, conflicts can arise during the administration of the estate of an individual who had transferred property into joint names (with a right of survivorship) with another person who is not a spouse or where the spouses do not have common children. Disgruntled beneficiaries, heirs

at law or creditors, may try to claim that the property held jointly should form part of the deceased's estate to be distributed in accordance with the terms of his or her Will, or be subject to estate liabilities.

Where a parent transfers property into joint names with only some of the children, there is potential for conflict among the children and other beneficiaries as to whether an immediate gift was intended at the time of transfer, or whether the surviving joint owners hold the property as a Resulting Trust for the parent's estate.

In addition to potential conflict, a host of other problems may be associated with the transfer to joint tenancy. For example, if the property transferred has an accrued gain, there could be immediate tax liability triggered, upon transfer. If the family home is transferred to joint tenancy, there may be loss of some of the Principal Residence Exemption, in the future. In general, property should be transferred into joint names with children only when an immediate gift is intended. If you are contemplating joint tenancy with right of survivorship, you should be aware of the following:

- All owners have immediate, full access to the property.
- The property passes to the surviving owners on the death of one joint owner by right of survivorship, bypassing the deceased's estate and possibly conflicting with distribution plans in his or her Will. For example, the Will may provide for an equal division of the estate among surviving children. If property is held jointly

with only one of the children, was it intended that that child receive this asset in addition to an equal share of the estate?

- If there is an *out of order death*, family members may be disinherited. For example, what if one of the children dies before the parent? Usually grandchildren receive a *gift over* of their deceased parent's share under their grandparent's Will. However, with joint tenancy, grandchildren who are the surviving children of a predeceased child of the testator will not receive their deceased parent's share. On the grandparent's death, the property will pass only to the surviving children who are joint owners. This could occur where there is a common accident that claims the parent and grandparent.
- The property may become subject to the claims of creditors of all joint owners. In the event of divorce of one of the joint owners, a *creditor* could include an estranged spouse of one of the joint owners.
- A transfer of property into joint names, unless to a spouse, creates a *deemed disposition* or sale at fair market value for income tax purposes on the portion passed to the other joint owners. The death of a joint owner also generates a deemed disposition on that person's share.

- All joint owners must declare their portion of the income and capital gains from the jointly held property, if any, annually.
- A portion of the *Principal Residence Exemption* will be lost if the jointly owned property is a principal residence for only one, or some, of the joint owners and other joint owners have their own residence on which they intend to claim the exemption.

If property is held jointly and you want to avoid the previously discussed negative consequences, professional advice is recommended. If you are a joint owner or are considering becoming one, talk to your tax and legal advisors about the benefits and risks. Your BMO Nesbitt Burns Investment Advisor can help introduce you to a professional advisor upon request.

Note: Some terms are capitalized for purposes of greater clarity in the context of this discussion only.