

JOINT OWNERSHIP OF PROPERTY: PROS & CONS

Spouses commonly hold much of their property jointly with a right of survivorship – it is a very convenient way for couples to pass property to the surviving spouse. A minimum of paperwork is required and probate fees can be avoided because the jointly held property passes outside the estate and is not distributed under the Will. In addition, there are no tax consequences in Canada to passing property between spouses. It may not be appropriate, however, if there are other beneficiaries, such as children of a first marriage.

Conflict can arise during the administration of the estate of a person who has transferred property into joint names with a right of survivorship. Disgruntled beneficiaries under the Will may claim that the property should be part of the estate.

Where a parent transfers property into joint names with one or more 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 owner holds the property in trust for the estate of the parent. In addition to potential conflict, a host of other problems may arise. In general, property should be transferred into joint names with children only when an immediate gift is intended. Consider the following:

- All owners may have immediate full access to the property.
- Assuming a “right of survivorship”, the property passes to the surviving owners on the death of one joint owner, bypassing the deceased’s estate and possibly conflicting with distribution plans in their Will.

- If property is held jointly with a right of survivorship with children and there is an “out of order death”, family members may be disinherited. For example, what if one of your children dies before you do? Usually grandchildren receive a “gift over” of their parent’s share under the person’s Will if the parent has already passed away. But with joint ownership the grandchildren will not receive any share of the property owned jointly by their parent and you. On your death, the property will pass only to the surviving children who are joint owners. This could occur where there is a common accident.
- The property may become subject to the claims of creditors of all joint owners, and this could include an estranged spouse.
- A transfer of property into joint names, unless to a spouse, creates a “deemed sale” for income tax purposes on the portion passed to another joint owner. The death of a joint owner generates another deemed disposition on the accrued gain on that person’s share.
- All joint owners must declare their portion of the income and capital gains from the jointly held property.
- A portion of the “principal residence exemption” will be lost if the jointly owned property is a principal residence and other joint owners have their own residence on which they claim the exemption.

If property is held jointly with children and the above consequences were not intended, professional advice may be recommended. If you are a joint owner or are considering becoming

one, talk to your legal advisor about the benefits and risks. Your Investment Advisor can help introduce you to a professional advisor.

Wealth Management Group
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