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BARRISTERS AND SOLICITORS

Business Bulletin, June 2006
Joint Tenancy - Use With Extreme Caution
by Harry Thorsteinson

One of the most abused "tools" in estate planning is the misuse of joint "tenancy" or "ownership". Many assets can be owned in this fashion and it is most frequently used by husbands and wives – houses, bank accounts and investments are examples. The significance of this type of ownership is that the interest of the deceased owner flows directly to the survivor upon death. The use of this type of ownership is appropriate within a marriage.

Problems arise, however, when people extend the use of joint ownership beyond and outside marriage. An example would be the single person who decides to place an asset in joint ownership with a child. The usual motivation is to avoid the costs associated with "probating" an estate and the "probate fees" themselves. Joint ownership may accomplish these savings, but such "savings" may pale in comparison to the potential problems that are created.

These problems are best illustrated with the example previously mentioned – a father (widowed) transfers ownership of his home into the name of himself and one of his daughters as joint tenants. The father may live for many years and could have a "falling out" with his daughter. If so, he could change the "joint" ownership in these circumstances but he couldn't change the fact that the daughter now owns one-half of his home and if he is not getting along with her, this could be very dicey. The daughter could experience financial difficulties and her creditors may come after her share of the property. The daughter may experience marital difficulties and her half of the property may become embroiled in her messy matrimonial problems. There are potential problems for the daughter as well. Since this is not her principal residence any increase in value would be subject to capital gains!

A major problem we experience is the lack of clarity as to the intentions of the father in this example. This situation is common and rarely do we find any evidence related to the intention of the person in the father's position. We are left trying to figure out whether the daughter has this extra gift or whether she is to share it with the rest of the family. The situation pits one family member against another and often leads to very costly and painful estate disputes.

The lesson to be learned here is that if you insist on using joint tenancy as a tool you should leave instructions with your estate papers clearly stating your intentions. Better still, think twice before you use this estate planning device. The financial savings are usually not worth the potential pitfalls. Finally, do not transfer any assets into joint ownership without discussing this with your lawyer and ensuring that this tool is appropriate and fits into your overall estate plan.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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