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Joan Marie Mikkelsen, EPC, CFP
Financial and Insurance Services



www.CheckWithJoan.com

Bus: (902) 468-0602 Fax: (902) 435-9933 Toll-free: 1-877-439-8396 E-mail: info@joanmikkelsen.com

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2 Kincardine Dr., Dartmouth, N.S., B2X 1H8

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Office relocation

Please note my new office address and fax number as listed above.



Pitfalls in joint tenancy

It is common for spouses to hold assets (residence, cottage, vehicles, bank account and/or investments) in joint tenancy. Upon the death of one spouse, or tenant, ownership remains with the surviving tenant. Not only convenient, joint tenancy is an excellent estate planning tool because assets can be passed to the surviving spouse (tenant) without the estate having to go to probate.

It becomes a little tricky for a person without a spouse. The dilemma arises when the person is capable of looking after his/her own affairs and it is not necessary

for an Enduring Power of Attorney to become involved, but on occasion he/she needs someone to withdraw cash from an account. For example, I often hear of situations where an elder is advised to add an adult child to a savings or chequing account so that he/she can do the elder's banking should the need arise. The accounts (assets) are then held in joint tenancy, and while this may be advantageous in some ways, there are risks involved – including the following:

- Giving up ownership
- Triggering a taxable capital gain
- Being vulnerable to tenant's creditors and/or marital asset division in the event of a marriage breakdown
- Losing control over how estate is distributed

Giving up ownership: When an account is changed to joint tenancy, you are basically sharing ownership—all tenants have 100% right to the asset. For example, if you add a name to your savings or chequing account, that person has complete right to your account—not just 50%. When one tenant dies, the surviving tenant becomes owner of the asset.

Triggering a taxable capital gain: Canada Revenue Agency deems that disposition of an asset occurs when title changes, and the disposition is proportionate to the number of new tenants.

Pitfalls in joint tenancy ...continued

For example, if two tenants are added to an asset (cottage and/or investments), you are deemed to have disposed of 2/3 of your asset, thereby triggering an immediate capital gain—of which 50% is taxable. It could also mean losing the principal residence capital gains tax exemption should the added tenant already be using the exemption for his/her property.

Being vulnerable to tenant's creditors and/or marital asset division in the event of a marriage breakdown:

If the tenant has credit problems, or has co-signed for someone else who has credit problems, your assets could be at risk to their creditors. Also, in the event of a marriage breakdown, your assets may be considered the tenant's assets. Remember, you may be dealing not only with your family member or friend, but also with his/her extended family.

Losing control over how estate is distributed:

Assets registered as joint tenancy are excluded from your estate for probate purposes. Upon death, the surviving tenant becomes owner of joint tenancy assets. As an example, let's assume that you have four children and your will states that they are to receive equal shares of your assets:

1. RRIF with designated beneficiaries—each child to receive 25%
2. Life insurance company savings account with designated beneficiaries—each child to receive 25%
3. Savings account and GIC in joint tenancy with one of your children—the only one who lives nearby.
4. Residence (deed in your name only)

Following your death, your residence would be the only asset requiring probate (distribution according to your will) because assets with designated beneficiaries and/or joint tenancy are not included when establishing the value of your estate. The RRIF and life insurance company savings would go to your four children as you stated (25% each), and the bank account and GIC would go to the surviving tenant—namely, the child living nearby. The child who is the surviving tenant may or may not choose to share the account with siblings as you intended.

If distribution of your estate is perceived to be unfair, your estate may be contested. Contesting an estate is time consuming, expensive and potentially divisive. Good planning can, and should, prevent the likelihood of such an action.

While it may be convenient to have someone who can withdraw cash from your accounts, you should be aware of the risks in joint tenancy, and know that there are other ways of accomplishing the same thing with less risk. One is an Enduring Power of Attorney. Your Power of Attorney does not become owner of your assets, and there are laws to ensure that he/she acts in your best interest. In addition, you could open a separate, small savings or chequing account joint with a trusted family member or friend, making it possible for that person to withdraw cash from a single account when it is inconvenient for you to do so. Other assets would not be involved.

The bottom line is—it is not necessary for you to give up ownership of your assets in order for someone to act on your behalf.



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