



BEWARE JOINT-TENANCY

Janet Crompton believed she had set her estate in perfect order before she passed away in the summer of 2015. Her intention was to distribute her remaining assets equally among her four adult children. After chatting with some trusted friends, it had seemed obvious to her that her Vancouver home could easily be shared by her children simply by changing the ownership of her home to Joint Tenants with Right of Survivorship between her four children and herself. Her friends had told her this was a great way to pass down an asset to her intended beneficiaries and avoid provincial probate fees charged on estate assets at time of death. Assets held in Joint Tenancy pass directly to the remaining joint tenants outside of the estate (i.e. the will, and control of the executor) of the deceased joint owner. Assets passing this way do NOT avoid income tax consequences of the transfer.

NOT SO SIMPLE

What Janet had expected would be a simple transition, became, as it turns out, a nightmare for her children. While she had anticipated that the children would simply sell the home and share the proceeds, family needs and expectations had changed. Her youngest adult son Ron, who the others complained had never really “launched”, had been living in the basement of the home, helping Janet as she aged, cutting the grass, driving her to appointments, and the grocery store. This arrangement allowed him to live essentially rent free and at low expense, enjoying shared groceries provided by his mother.

When Janet died, Ron having just lost his mother and main supporter, did not wish to have his rent-free home sold out from under him. He couldn't afford to buy something with his share of the estate, and with a spotty work history and no current job he could not get a mortgage. Instead, he begged his brother Chris not to ‘un-house’ him. He started a campaign to retain the house as an investment for the others with him as ‘caretaker’. The other two children, Sally and Ben both had other plans for their $\frac{1}{4}$ share of the house (in one case, helping their children buy homes in the pricey Vancouver market). What Janet had thought was a simple method of distributing her property had now become a matter of conflict between her children.

Not only had conflict arisen, but serious risk to property ownership had been created by the Joint Tenants structure. If, for example, Sally were to pass away, her husband Andy would not inherit her share. Rather Sally's share would be split among the surviving three joint Tenants: Ron, Ben and Chris – rather than among Sally's children, which surely was not Janet's intention.

MEASURING THE TRUE COSTS

The use of Joint Tenancy has become a popular solution for many retirees considering their estate plans. In many cases, it can work very smoothly, however where there are second marriages, blended families, common law partners without agreements and children of varying means, Joint Tenancy planning should be properly reviewed with a lawyer to ensure that unintended outcomes, like Janet's are avoided. In many cases, a Will would provide a much more certain distribution of property. In her Will, Janet could have provided instructions that the house be sold with the proceeds divided equally, avoiding the sibling



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conflict that arose when people's priorities had changed by the time of death. Ron and Chris would not be able to forestall a sale of the house. Yes, the value of the house would be subject to the probate fee, however at about 1.4% (in B.C.), or amount \$14,000 on a million-dollar property, it is a small price to pay for certainty and family harmony.

TAX IMPLICATIONS

There is another consequence of Janet's Joint Tenancy strategy given the new principal residence rules. Under the new rules, when Janet changed her house from 100% self ownership to 20% ownership, each between her and her four children – she would have had to report the transfer on her tax return and she would have lost the principal residence tax exemption on the 80% she transferred to her children. Each of her children would now have to pay tax on whatever gains occurred between the date of transfer and date of death on their 20% ownership.

The transfer also cost her legal fees and in BC Property Purchase tax on the 80% transfer. Depending on the value of the house at the time

Janet made the transfer, the costs to pursue this strategy could equal the savings on probate fees.

When considering joint ownership, it is important to distinguish between Joint Tenants in Common and Joint Tenants with Right of Survivorship. If you own property in a Joint Tenancy in Common your share will be transferred to your estate on death. If you own property in Joint Tenancy with Right of Survivorship, your share will be transferred to the surviving Joint Tenant. In both cases, there are income tax issues.

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