



Fleury, Comery LLP  
Barristers & Solicitors

## JOINT OWNERSHIP: IS IT GOOD ESTATE PLANNING?

Our older clients frequently enquire about transferring real estate, or bank accounts from sole ownership into joint ownership. People have been told there is a significant savings to their Estate by the elimination or reduction of Estate Administration Tax (E.A.T., formerly "probate fee"). What are the pros and cons of this suggestion?

### REAL ESTATE and BANK ACCOUNTS

Jointly owned real estate property ("joint tenancy") passes by law to the surviving owner(s) when one owner dies. For joint bank accounts, you must make sure that it is registered "joint with right of survivorship" (JWROS) for this to happen.

### PECORE CASE

In 2007 the Supreme Court of Canada made an important decision (*Pecore v. Pecore* 2007 SCC 17) about joint ownership. Put very briefly, a joint property is held in trust (a "resulting trust") for the person who owned it before it was made joint UNLESS the new joint owner can prove that the change was a gift. Accordingly, **joint property IS part of the estate inventory** in cases where the joint ownership was merely for convenience, or an attempt to avoid estate tax.

### ESTATE ADMINISTRATION TAX ("E.A.T.")

E.A.T. is paid when an Application for a Certificate of Appointment of Estate Trustee (Letters Probate) is filed with the court. The rate is \$5.00 per thousand dollars of Estate value up to \$50,000.00, and \$15.00 per thousand dollars on the balance. As of January 1, 2015, new enforcement provisions came into force (see our [Memo#38](#)). Tax avoidance schemes can easily cost more than this rather minimal tax.

### LOSS OF CONTROL

Transfer of property is no mere formality. For example, the transferor will no longer be sole owner of his or her house. Suppose, for example, that the new joint owner and spouse later have a marital breakdown. His or her one-half interest in the house would be considered part of the net family property in any division of assets with the spouse. If he or she needed money to make an equalization payment, he or she might well be forced to sell the interest in the jointly owned property.

### INCOME TAX IMPLICATIONS

If an asset is not a principal residence, a capital gain is triggered for the transferor on its sale. For the new joint owner there are capital gains tax implications if the home, for example, increased in value between the time of the transfer and the time it were sold. The tax liability can easily negate any savings of E.A.T. On the other hand, if the house were transferred to the family member as an estate beneficiary on the death of the family member, there would be no tax payable. Thus, transfer of a house to joint ownership forfeits part of the tax benefit of a principal residence for the period after the transfer.

### HOW LONG DO YOU PLAN TO LIVE?

Life expectancies have dramatically increased in our society over the past thirty years. A healthy 60 year old woman is most likely to live to age 87 and may well live beyond that. She may need for herself the entire proceeds of sale of the family home to support herself.

### LITIGATION POTENTIAL

If there are other estate beneficiaries, there is a real potential for estate disputes where the surviving joint owner either claims the property as a gift, or even hides its existence from the others. Estate litigation is extremely expensive and upsetting.

### OUR RECOMMENDATION

Based on the foregoing considerations, we normally recommend AGAINST this kind of transfer of ownership. There are rare circumstances in which it may be worthwhile. Before considering and agreeing to such a transfer, you should review these and other considerations with your lawyer and your tax adviser.

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