On the death of an individual who holds property in joint tenancy his or her interest will pass to the other joint owner(s) of the property rather than to the deceased’s estate.

Joint ownership can minimize probate taxes on death; however, income and capital gains taxes could be triggered on the initial transfer into joint ownership.

Before determining whether to place property in joint ownership it is important to consult with a professional advisor as such a transfer could have inadvertent tax consequences. Further, there are risks associated with holding property in joint tenancy including that any judgment on either party could attach to any jointly owned real property, either party may prevent the other from selling or mortgaging the jointly owned real property and each party has an unrestricted ability to withdraw funds from a joint bank account, which can be abused.

Property can be placed in joint ownership for convenience, in which case on death the deceased’s interest will pass to his or her estate rather than to the joint owner.

**What is Joint Tenancy?**

Two or more people holding property, real or personal, in a manner which, at law, results in the property on the death of one joint holder passing to the surviving joint owner or owners, rather than the deceased’s estate. This type of property ownership differs from “tenancy in common” where a deceased’s interest passes to his or her estate on his or her death.

**Why Place Property in Joint Tenancy?**

Many people place their property in joint tenancy as a method of estate planning. Placing your property in joint ownership results in an ease of transfer of ownership, can avoid probate taxes payable on that joint property and can avoid the complications of transfers of property by the estate on death. In the event that all property of the deceased is held jointly, it may eliminate the need for probate entirely.

**What are some Risks of Placing Property in Joint Tenancy?**

If an owner wishes to place property into joint ownership with another individual, he or she will be deemed for tax purposes to have disposed of that property at that time. In the event the disposal is to a non-arm’s length individual, such as a family member, the disposition will be deemed to be at the fair market value of the property. As a result, if there was an increase in value from the time the owner acquired the property to the time that he or she transfers it into joint ownership, there would be capital gains tax triggered. There may be exemptions available to defer payment of those taxes if the property transferred is the owner’s principal residence or shares in a qualified small business corporation. Alternatively, a rollover is available in the event the transfer is to a spouse. The party receiving the property should consider their own tax position in such case.

Further, if income is earned on the property after transferring it into joint ownership, the new joint owner will be attributed some of that income for tax purposes based on their proportionate interest. This is not the case with a transfer to a spouse or minor child where income is attributed back to the original owner.

Anyone considering a transfer to joint tenancy should consider the risk of misuse and the impact on their right to deal with the property freely. For example, the joint owner will have to approve the sale or mortgage of real property and may have the ability to withdraw funds as they wish from a joint bank account depending on signing authority. Owning property jointly with another means that any judgments that would attach to their property now attach to your jointly held property.

Furthermore, your jointly held property could become the subject of a judgement or Sheriff’s execution or a claim under the Matrimonial Property Act, Testator Family Maintenance Act, or other similar legislation against the co-owner. For these...
reasons it is important to discuss the risks with a professional before placing property into joint tenancy.

What is the Concept of Joint Tenancy for Convenience?

Joint tenancy for convenience is placing property into joint tenancy to enable a trusted individual to deal with the property during the owner’s lifetime; however, on death property is not to be owned by the remaining joint tenant but rather should be disbursed in accordance with the owner’s estate. For example, a senior may make her bank account joint with one daughter to enable her daughter to pay her bills with the intention that on her death the account would be split among her three children. There is a presumption that, particularly with bank accounts, naming an adult in joint tenancy is deemed to be for convenience absent evidence to the contrary.

If property is considered to be held in joint tenancy for convenience only it will be considered part of the deceased’s estate and will have to be considered for purposes of determining probate taxes. Therefore, it is important to always document your intention.

When Might I prefer Tenancy In Common?

In some cases the circumstances and desired objectives better suit ownership as tenants in common rather than joint tenancy. This may arise in situations where there is unequal interests in the property or where the intention is not to have the property be wholly owned by the survivors in the event of the death of one of the owners.

Consider for example a situation wherein a cottage is owned by two friends or siblings and each wants to ensure that on his/her death that his/her spouse and children will continue to be entitled to own and use the cottage. However, the friends or siblings might also benefit from having a written agreement between them which clearly provides for the sharing of expenses, repairs and scheduling of use of the cottage.

Further, there could be a situation where a parent and two children have purchased a property together; however, one sibling paid 50%, while each of the others paid 25% of the purchase price. In that case, it may be desirable for the percentage ownership of the property to be divided according to the respective sharing of the purchase price. This could not be accomplished with joint tenancy and therefore tenancy in common may better suit the needs of the parties in that situation.

Other Alternatives

In some situations, other alternatives to joint tenancy should be considered. This often involves the use of trusts including bare trusts, alter ego/joint partner trusts, and testamentary trusts. Such advanced planning provides a more secure structure than joint tenancy.

THE NEXT STEP

Joint tenancy, with proper advice, can be a useful tool of convenience and estate planning. However, it can lead to unintended and uncertain results without professional advice. Patterson Law tax and estate planning lawyers are able to provide the guidance you need.

You should be certain of the integrity, financial and matrimonial stability of the person you select to be your co-owner. A review of the income tax implications is important. You must be certain of your intent and identify whether the co-owner is named for convenience only or will acquire a beneficial owner by interest. Your intent should be evidenced by an agreement that is placed with your other estate planning papers as well as given to your bank and financial advisors.

HOW WE CAN HELP?

Patterson Law is a full service firm comprised of lawyers with a wealth of experience and knowledge, including expertise in advising individuals on how best to structure their estate planning affairs. We work closely with each other and are structured to ensure consistently high standards of advice and services.

We welcome you to contact one of our lawyers who would be pleased to work with you as appropriate to best achieve your objectives. With respect to areas most applicable to structuring your affairs using joint tenancy, we recommend one of our lawyers who specialize in estate planning, real estate (commercial and residential), succession planning and wills.

Each of our lawyer’s contact cards are located at www.pattersonlaw.ca. However, if you need help determining who best to contact, you may wish to contact our reception in Truro at 902-897-2000 or in Halifax at 902-405-8000 or contact us at contactus@pattersonlaw.ca.

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