THE DANGERS OF (AND ALTERNATIVES TO)
JOINTLY OWNED PROPERTY

In my practice, I am frequently consulted by seniors who are considering putting their house, cottage or farm into "joint names" with their children. Often they have been told that this is a way that they can avoid Estate costs and taxes. While that is often true, there are a number of factors and legal consequences that people should be aware of before they place their land into joint names with a person other than their spouse. For instance:

1. Probate fees in Alberta are as follows:

Net value of property in the estate	Fee
$10,000 or under	$ 35
over $10,000 but not more than $25,000	$ 135
over $25,000 but not more than $125,000	$ 275
over $125,000 but not more than $250,000	$ 400
over $250,000	$ 525

2. There is no Estate tax payable in the Province of Alberta;

3. Transferring property into joint ownership with someone other than a spouse, may trigger income tax consequences if the property has appreciated in value. It may also result in unforeseen tax consequences (Property Tax subsidies or "clawback" provisions);

4. Joint ownership means joint control - the new "joint owner" will have rights and interests in the property, for instance:

   (a) The property may now be attached by creditors (or estranged spouses) of the new "joint owner";

   (b) The Transferor will lose the freedom to deal with the property without obtaining consent from co-owners;

   (c) Unethical (or desperate) persons who have been named as joint owners may encumber the lands;

   (d) In the event a child (co-owner) should predecease his parent, that child's children would not inherit an interest in the lands.

On a related issue, our office is frequently confronted by situations in which a senior has placed a bank account, or other investment, into "joint names" with a trusted adult child or close friend. Frequently this has been done because the senior was having difficulty getting out and they wished to give the child or friend signing authority on his account so that the child or friend could do the banking. On other occasions, however, investments have been placed into joint names as an Estate planning measure, to avoid Probate.

Unfortunately, it is often very difficult to know the senior's intention after he has passed away. The legal texts are full of cases in which "disappointed beneficiaries" claim that monies in a joint bank account should be brought into the Estate and shared by all beneficiaries and not belong to the surviving account holder.

I do not recommend to my clients that they place bank accounts (or investments) into joint names (other than with their spouse), simply to give another person signing authority. The same result can be obtained just as easily, and cheaply, with a "Power of Attorney" document. Most banks will provide a Power of Attorney for their accounts (and assist you with executing it) free of charge. On the other hand, when my clients wish to place an account into joint names for Estate planning purposes, I urge that all family members (and potential beneficiaries), be aware of that intention, otherwise, misunderstandings, hard feelings and litigation are the usual result.

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