

The Perils Of Joint Registrations

How often have I heard the response “ I don’t need a Will; everything I own is registered jointly” ? Too often unfortunately.. Joint registration forms a part of Estate and Succession Planning, however, only in support of a sound and legally binding Will.

In the case of a married couple joint registrations allow for the passage of assets from one partner to another upon the death of one of the parties. It makes ultimate sense in this scenario to have as many assets as possible in both names. Residence, cottage, savings, investment accounts, bonds, and GICs. In the case of assets wherein a designated beneficiary is allowed RSPs, RIFs, Annuities, and Life Insurance, it is again logical to designate a spouse. Upon the death of one spouse change the beneficiary status to reflect the terms of your Will, children, friends, relatives, charities, etc, most instruments allow for multiple beneficiaries. In this manner the assets will flow outside of your Will and will not incur Estate Taxes (Probate Fees).

My real concern is that single and/or widowed individuals feel it is necessary and prudent to register assets with children and family members. In this way they feel a Will is no longer applicable and the Estate will be distributed directly without the legal requirement of an Application for Appointment of Estate Trustee with a Will (Probate). Think about the following scenarios all of which I have witnessed too frequently.

- 1) Jointly registered assets are not creditor proof, in dher words if your son or daughter or their respective spouses declare bankruptcy your assets could be considered theirs and distrained upon by the Trustee in Bankruptcy.
- 2) Unfortunately our fellow human beings do not always die in the order destined by God. If you had your investments registered with say your only son and he predeceased you where would you stand? Well I would write another Will you might say. Fine if you are still mentally competent to do so, if you are not you would be classified as having died Intestate and the Government would assume distribution of your Estate.
- 3) What about joint registration with a child and their respective spouse, if your son or daughter predeceased the Estate would flow to you Grandchildren via your son in law &/or daughter in law. Fine in some situations, however, what if your son in law and/or daughter in law remarry? The full Estate would now form part of community of assets in a new family!!
- 4) My biggest asset is my residence, surely it makes sense to register that with my child/ children? Possibly, however under probably only one scenario. If your child and/or children reside with you and have no secondary residence of their own I would recommend it. If not don’t do it. We have already discussed the potential for creditor or spousal claims but this issue goes further. If your issue were not resident in the house at the time of your death then Canada Customs & Revenue (the Tax Man) would classify your home as an investment property in your children’s hands and upon sale of the same Capital Gains Taxes would be incurred. Lets look at an example. Upon the joint registration of your residence the fair market value was considered to be \$ 200,000. Upon your death it sold for \$ 300,000, a \$ 100,000 increase. This increase would be deemed to be a Capitol gain for your off-spring and taxed accordingly, 50% of the gain times their marginal tax rate. In this scenario approx. \$ 23,000. If you had left it as was the Estate Taxes payable on your residence would have been \$ 4,000!
- 5) Joint registration of assets is also a surrendering of financial power to others. How do you know that the good intentions of others exhibited now will continue in the years ahead. All of the issues addressed earlier come into play, financial distress of a child, mental or physical changes, divorce or separation. All of which could colour or change an individuals thought processes and caring.

In conclusion as stated at the outset Joint Registrations are a valid and valuable Estate and Succession Planning tool, however, think very carefully about the implications and consult a specialist prior to making major changes, your Lawyer, Financial Advisor, Accountant, or Graham Slattery, Senior Partner, ProContinum Estate and Trust Planning Services.