

Be careful with joint ownership

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WEALTH TRANSFER STRATEGY 3

Placing non-registered assets into joint ownership with right of survivorship¹ is one of the most common methods of avoiding probate, and it can be effective in the right situation. However, there are some significant disadvantages with joint ownership that may outweigh the benefits. Fortunately, there are other probate-avoidance options available that help avoid the risks of joint ownership and provide other benefits as well.

WHAT IS PROBATE?

Probate is an administrative procedure whereby the court confirms the validity of the will and the authority of the executors. Third parties such as financial institutions and the land registry office may require probate to ensure that the will presented is indeed the last will and testament of the deceased and that the executors have authority to act on behalf of the estate.

THE BENEFITS OF AVOIDING PROBATE

All provinces except Quebec charge a fee or tax to probate a will, however, the fee in Alberta is capped

to a minimal amount. This cost is based on the value of the estate and varies from province to province rising as high as 1.5 per cent in Ontario and 1.4 per cent in British Columbia.

In addition to the cost, the probate process can be a lengthy one, potentially taking months or years if the will is contested. Furthermore, once your will is submitted to court it becomes a matter of public record. That means that anyone can view your will and the confidentiality of your testamentary instructions has been lost.

¹All other references to joint ownership mean joint ownership with right of survivorship. Joint ownership does not apply in Quebec.

ADVANTAGES OF JOINT OWNERSHIP

Each joint owner holds title to the whole of the asset. On the death of one joint owner, the asset transfers directly to the survivor. The asset does not form part of the deceased's estate and therefore avoids probate.² By avoiding the deceased's estate, the asset also avoids claims by creditors of the estate and challenges to the validity of the will.

Joint ownership is particularly effective with spouses as the Income Tax Act allows assets to be transferred between spouses on a tax deferred basis.

DISADVANTAGES OF JOINT OWNERSHIP

Before transferring any assets into joint ownership there are a number of important issues that you should consider that may change your mind.

The addition of a joint owner, other than your spouse, will be considered a taxable disposition triggering a potential tax liability if capital gains are realized.

In addition, if the joint owner is your spouse all income and capital gains will be attributed back to you and if the joint owner is a minor child, all income, but not capital gains, will be attributed back to you.

The transfer into joint ownership will also result in a loss of control of the asset. Any decisions will now require the consent of the other joint owner.

As a result of the transfer you have exposed the asset to the creditors of the new owner if they get sued or file for bankruptcy. If the new joint owner is married, the asset could be subject to an equalization claim in the event of a marriage breakdown.³

If a home is involved, a portion of the principal residence exemption and eligibility under the Home Buyers' Plan (HBP) may be jeopardized.

Lastly, any tax liability triggered on the automatic transfer at death will become the responsibility of the estate. This should be considered when determining how to distribute your other assets. Beneficiaries under the will may have their entitlements unfairly reduced.

THE COMPLICATION

It is important to distinguish between a true joint ownership arrangement and an agency agreement. Even though the asset is owned jointly by two individuals, it may be possible that it is an agency relationship.⁴ Some individuals register assets in joint ownership for convenience purposes – to enable one individual to manage the asset on behalf of the other. In this situation there is no intent to convey beneficial ownership to the other individual, which, is required to avoid probate. For example, an elderly parent may add an adult child as a joint owner onto a bank account to facilitate paying bills and writing cheques. However, when the parent dies, disputes can often arise as to whether or not he or she

²In Saskatchewan, jointly held property and insurance policies with a named beneficiary are included on the application for probate but do not flow through the estate and are not subject to probate fees.

³The rules for equalization or division of assets upon marriage breakdown vary by province. Individuals should consult with their legal advisor.

⁴An agency relationship or agency agreement is where one party acts on behalf and on instruction of another.



intended to give beneficial ownership to the child or whether it was just an agency arrangement.

If an agency agreement is intended, probate tax will not be minimized. The deceased did not give any beneficial interest to the other owner and no right of survivorship exists. Thus, the asset remains in the estate and its value is included in the calculation of probate tax.

It is important for individuals to document their intentions, as the issue of joint ownership versus agency agreement has been the subject of a number of lawsuits.⁵

Joint ownership is becoming increasingly complicated and is not necessarily a simple and easy way to transfer wealth and avoid probate. While it may be effective with spouses it is generally not recommended in other situations.

ALTERNATIVES

Non-insurance investments such as Bank issued Guaranteed Investment Certificates and mutual funds are often held jointly to avoid probate. Fortunately, for those interested in avoiding probate there are alternatives. A segregated fund contract or insurance company Guaranteed Interest Contract (GIC) offers the ability to avoid probate without using joint ownership, as well as other advantages, while also avoiding many of the disadvantages of joint ownership.

When a beneficiary other than your estate is named, assets bypass your estate and therefore bypass probate,

and are paid directly to the beneficiary. Payment may be made quickly, usually within two weeks of receiving sufficient proof of death. A segregated fund contract or insurance GIC is easy to set up. You can even change the beneficiary at any time without requiring his or her signature, provided the beneficiary is not named irrevocably.

Because you are not adding an owner you maintain complete control of the asset and do not trigger a taxable disposition.

As opposed to exposing your asset to the creditors of the joint owner, a segregated fund contract or insurance GIC with a beneficiary of the family class⁶ offers you the potential for creditor protection.

The beneficiary designations are extremely flexible. You can divide the asset however you like, structure some or all of the payments in the form of an annuity or establish a trust on your death that will qualify as a testamentary trust which benefits from being taxed at the graduated tax rates and is a great income splitting tool.

Segregated fund contracts also offer the benefit of maturity and death benefit guarantees on your investment.

⁵ Court decisions have dealt with whether a gift was made or an asset was held in trust for others.

⁶ In provinces other than Quebec, a family class beneficiary is any of the spouse, child, grandchild or parent of the annuitant.



Joint Ownership	The Segregated Fund Contract and Insurance GIC Alternative
ADVANTAGES	ADVANTAGES
On death avoids estate and probate	On death avoids estate and probate
Tax deferred transfer to spouse	Tax deferred transfer to spouse ⁷
DISADVANTAGES	DISADVANTAGES
Taxable disposition with non-spouse	Potential creditor protection
Loss of control	Easy and free to change beneficiary
Exposed to creditors of new owners	A trust named as beneficiary can qualify as a testamentary trust
May jeopardize principal residence exemption or HBP	Flexibility in structuring beneficiary payouts
Potential litigation – joint ownership vs. agency agreement	Capital guarantees on maturity and death

⁷If ownership transfers to a spouse and the contract continues.

IDEAL CANDIDATES

Investors should consider segregated fund contracts or insurance GICs as an alternative to joint ownership if they want:

- The potential to avoid probate and the resulting fees, delays and lack of privacy
- To maintain control of their asset
- The potential for creditor protection
- The ability to create a testamentary trust at death

TAKE ACTION

If you are looking for these features in an investment:

- Contact your advisor
- Decide how much you want to invest
- Name your beneficiaries and consider testamentary trusts
- Decide which segregated fund contracts – or insurance GICs – meet your investment goals



INVESTMENT OPTIONS WITH MANULIFE INVESTMENTS

Manulife and its subsidiaries provide a range of investments and services including:

Manulife Segregated Fund Contracts combine the growth potential offered by a broad range of investment funds, with the unique wealth protection features of an insurance contract. Through Manulife segregated fund contracts, investors can minimize their exposure to risk through income, death and maturity guarantees, potential creditor protection features, and estate planning benefits – all from a single product or insurance contract.

For conservative investors looking to help grow their wealth but who are also concerned about minimizing risk, Manulife segregated fund contracts can provide an ideal solution.

The Manulife Investments Guaranteed Interest Contract (GIC) offers competitive rates plus investment options that include Basic, Escalating Rate and Laddered GIC Accounts. Investors benefit from a guarantee on their principal investment and from several different investment options that can diversify and add flexibility to their portfolio. Manulife Investments GICs can be an ideal solution for conservative investors looking to help grow their wealth, but who are also concerned about minimizing risk.



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