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Pitfalls of joint ownership

Clients who register assets with their grown children as joint tenants could be asking for trouble. Things can sour when more than one child is involved there have been cases in which one child has decided to keep all the money

By Susan Yellin | January 2013

A growing number of parents are using joint ownership of some of their assets as an easy estate-planning tool for their children. It enables that portion of the estate to bypass probate and avoid probate fees when it is passed on to the children.

Joint tenants, whether as owners of a house or of an investment account, each have an undivided interest in the entire property. When ownership is designated as "joint tenants with right of survivorship" (JTWROS), it means that upon the death of one owner, full ownership is transferred directly to the surviving partner. The asset does not have to pass through the deceased's estate.

JTWROS works well between spouses, but parents who register assets with their children as JTWROS could be asking for trouble.

"The message that we're trying to get to people is that joint ownership is easy to administer and easy to pay out to the survivor," says Jamie Golombek, managing director, tax and estate planning, with ***Canadian Imperial Bank of Commerce***'s private wealth-management division in Toronto. "But it could lead to legal problems."

JTWROS can go sour when a parent has joint ownership with an adult child, especially if there are other children, or charities, with whom the parent would like to share the assets. The parent may expect the JTWROS-enabled child to distribute the assets among all the children when the parent dies. But there have been cases in which the JTWROS-enabled child has decided to keep all the money.

One such case between two siblings made it to the Supreme Court of Canada in 2007. The court ruled that the joint accounts should be distributed in accordance with the will, in which the parent stipulated the money be distributed between both children.

"If you are a financial advisor," Golombek says, "joint ownership could come back to haunt you. Certainly, an investment professional should never be recommending joint ownership, because it's a legal issue. And unless the [advisor] has a law degree and legal protection insurance, he or she shouldn't be giving legal advice."

You could have a discussion about joint ownership with a client, says Golombek: "But I really think the client should be getting legal advice from a lawyer."

Mark Halpern, president of ***illnessPROTECTION.com Inc.*** in Markham, Ont., says he knows of a number of cases in which joint ownership has worked smoothly with just one child as joint owner, who has distributed the assets among all the children. But if there is sibling rivalry when the parent is alive, Halpern cautions, things could become more acrimonious - and litigious - following the death of the parent.

From a tax-planning perspective, JTWROS can be useful in splitting some kinds of investment income and capital gains. And because JTWROS assets fall outside of the estate upon death, they aren't subject to probate fees.

Probate fees vary by province, ranging from 0.4% in Prince Edward Island to about 1.5% in Ontario, depending on the size of the estate.

"If you have an asset," Halpern says, "whether a non-registered bank account, a piece of real estate, even a principal residence - if it's just in one person's name, it's subject to probate."

Halpern points out that under JTWROS, any joint owner can withdraw funds from the account at any time without the permission of the other joint owners.

Another big downside is exposure to creditors. If one child is heavily in debt, his or her interest in the asset now is subject to claims by creditors.

Or, if the child's marriage breaks down, that asset can increase the value of the child's property when it comes to claims by the child's spouse.

"Where [a parent] has a good relationship with children or a child," Halpern says, "I think [JTWROS] could be an effective way to pass along an asset. It's fully private, so it doesn't appear in the estate at all and there are no probate taxes. And that's great. That's with good intentions.

"It does have its drawbacks, and that's why somebody does need to sit down with a certified financial planner or a trust and estate practitioner to look at what exactly the person really wants to accomplish by doing this."

Other strategies are available, Halpern adds, such as setting up a trust or having a joint-ownership situation in which one owner does not have access.

"There are different planning tools," Halpern says. "Each situation is unique and really requires sitting down with a qualified professional to review this information with them."

Talk about JTWROS should be part of the overall discussion regarding tax and estate planning, says Halpern, and this should involve a legal specialist.

Any discussion of JTWROS should centre on the intentions of the parent and touch upon other estate planning issues, such as wills, powers of attorney, insurance and planned charitable giving. Says Halpern: "It all has to be part of a more comprehensive conversation."