



Fleury, Comery LLP  
Barristers & Solicitors

## JOINT OWNERSHIP: IS IT GOOD ESTATE PLANNING?

Our older clients frequently enquire about transferring title to their house or cottage from sole ownership into joint ownership with their children. People have been told there is a significant savings to their Estate by the elimination or reduction of Estate Court fees. What are the pros and cons of this suggestion?

### AN EXAMPLE

Let us use an example of widow Jane Smith and her son David Smith. Mrs. Smith owns a home presently valued at \$250,000.00. David is her only son and sole heir. Mrs. Smith is 65 years old.

### SAVINGS IN ESTATE COURT FEES

If the house were transferred from Jane Smith's sole ownership to that of Jane Smith and David Smith as joint tenants, then on the death of either of these parties the survivor would take the entire ownership of the property "by right of survivorship". This means that title to the property would pass outside the deceased's Estate and accordingly the value of the house is not included in the Estate valuation, which is the basis on which Estate Court fees are calculated.

Estate Court fees on an Application for a Certificate of Appointment of Estate Trustee (Letters Probate) are payable at the rate of \$5.00 per thousand dollars of Estate value up to \$50,000.00, and at the rate of \$15.00 per thousand dollars on the balance. In our example, if the house formed part of Mrs. Smith's estate, then Estate Court Fees of \$250.00 would be payable on the first \$50,000.00, and \$3,000.00 would be payable on the balance of \$200,000.00 resulting in total Estate Court fees of \$3,250.00.

Keeping in mind that a transfer of title will occasion some legal fees, disbursements and registration charges of probably \$500.00 in total, the "savings" to the Estate amounts to about \$2,750.00.

### LOSS OF CONTROL

Transfer of title is no mere formality. Mrs. Smith will no longer be sole owner of her house. Suppose, for example, that David and his wife later have a marital breakdown. David's one-half interest in the house would be considered part of his net family property in any division of assets with his estranged wife. If he needed money to make an equalization payment to his separated spouse, he might well be forced to sell his interest in the jointly owned property.

### TAX IMPLICATIONS

If the asset transferred is not a principal residence, a capital gain on the interest transferred (e.g. ½ of the value, in our example) is triggered for the transferor. The cottage would attract this tax liability, as would other assets like stock certificates.

For the new joint owner there are capital gains tax implications because it is not his principal residence. If the home increases in value between the time of the transfer and the time it is sold or Mrs. Smith dies, there will be a capital gain and tax payable thereon. For example, if the house increases in value from \$250,000.00 to \$350,000.00, David will have a \$50,000.00 capital gain (i.e. one-half of the \$100,000.00 increase); his tax liability could easily be \$15,000.00 on that capital gain. The tax liability can easily negate any savings of estate Court fees. If the house were transferred to David as Mrs. Smith's estate's beneficiary, there would be no tax payable.

### HOW LONG DO YOU PLAN TO LIVE?

Life expectancies have dramatically increased in our society over the past thirty years. Mrs. Smith is most likely to live to age 84 and may well live beyond that. She may need for herself the entire proceeds of sale of this home to support herself.

### OUR RECOMMENDATION

Based on the foregoing considerations, we normally recommend AGAINST this kind of transfer of ownership. There are rare circumstances in which it may be worthwhile. Before considering and agreeing to such a transfer, you should review these and other considerations with your solicitor and your tax adviser.

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