



CESTNICK

TAX MATTERS

Joint ownership of homes and other assets can lead to unintended problems

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I recently met a couple in their 70s who asked me about putting their home in joint names with their son, Gerald. The plan is that Gerald, who I met, will inherit the home one day. Gerald is single, age 40, living in his parents' basement and tells me he's looking for the woman of his dreams. When he told me this, I immediately had visions of starting a new dating website for guys like Gerald who, in an era when real estate ownership is beyond the reach of so many people, might be very attractive to women who want a guy who owns a home.

But I digress. I then snapped out of my daydream and explained why joint ownership of a home – and of other assets more generally – is usually a bad idea. Let me explain.

1. You might trigger taxes. When putting a person other than your spouse on title as joint owner of an asset, you'll generally be deemed to have sold that portion of the asset at fair market value, which could give rise to a tax bill. You could avoid this by creating a bare trust arrangement in which the other person on title is considered to hold their

portion of the asset for you, in trust. This gets complicated, however, in part due to new filing requirements for trusts, and a bare trust may not allow you to avoid probate fees on the asset. Speak to a lawyer specializing in trusts.

2. Assets could be exposed to creditors. If the person who jointly owns an asset with you is subject to the claim of creditors – perhaps due to a bankruptcy or for some other reason – the value of the asset you hold jointly could be subject to the claim of creditors. Similarly, if the other owner owes money to the Canada Revenue Agency, the asset could be seized to pay off the tax debt.

3. You could lose control. Owning an asset with another person will mean that you no longer have full control over the asset. Further, you may have difficulty using the asset as collateral without the agreement of the joint owner, and this lack of control could be permanent.

4. You could still face tax. If you hope that naming another person as joint owner will save you taxes, this may

not be the case. If the asset generates income and the joint owner is your spouse, the attribution rules in our tax law will cause you to pay the tax on all income earned on the asset (unless you charge the prescribed rate of interest on the value transferred to your spouse). And naming your child as a joint owner still leaves you on the hook for taxes on the portion of the asset still owned by you when you die.

5. A principal residence could be taxable. If you add a joint owner to your principal residence, you will only be able to use your principal residence exemption on your share of the home later when it's sold, or you die. The portion owned by the other person may be taxable if, for example, they have another residence as well.

6. Additional filings may be required. There's a deadline of April 30, 2024, to file the new Underused Housing Tax (UHT) return for those caught under these rules (see my article dated Feb. 8, 2023). If you own income-producing real estate jointly with your spouse or another person, it's quite possible that CRA will consider this to be a partnership, in which case there's a requirement to file a UHT return annually. The penalties for failing to file are steep, at \$5,000 for each individual for each property.

7. Who gets what may not be appropriate. When you add a person as a joint owner on an asset, the asset will generally pass to that individual when you die. It may not be clear whether your intention is to have that one person inherit the asset or that the asset should be shared with all of your heirs when you're gone. There's no requirement for the joint owner to share the asset, which may not be your intention.

8. Legal battles could result. If certain people feel that your intention was to leave assets equally to various beneficiaries, but joint ownership did not include each of them, it's very possible that a battle in court could result over the division of your estate when you're gone. It's important to make your intentions clear to all beneficiaries before you die.

If any of these drawbacks to joint ownership concern you, think twice before putting assets in joint names, and speak to a lawyer specializing in trusts and estates for advice.

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