TD Wealth

Wealth Insights

TD Wealth Private Investment Advice

Monthly Perspectives From The Daley Group Wealth Management

Joint Ownership: The Good, the Bad & the Potentially Ugly

Owning assets jointly has grown in popularity with spouses, and now more frequently between parents and children. While there may be benefits, be aware of the potential pitfalls prior to transferring assets into joint ownership.

Joint ownership occurs when an asset is owned by more than one person. There are two forms: "Joint tenancy" (with the right to survivorship) refers to an arrangement in which the ownership of the asset passes directly to the surviving owner(s) upon the death of one of the owners.* As such, the asset passes outside of the deceased owner's estate. Under the alternative "tenants in common" arrangement, owners each hold separate ownership interests in the asset that can generally be sold, transferred, or bequeathed without the consent of the other owners.

Here, we focus on joint tenancy, which is being increasingly used in the estate planning process. While there are benefits, be aware of the bad and potentially "ugly" implications prior to entering into this arrangement:

The Good...

Ease of asset transfer — Upon the death of one owner, the surviving owner(s) automatically becomes the owner of the asset, with few legal or administrative hassles upon transfer.

Bypass probate — Since assets pass to joint owners outside of the will, no probate or estate administration fees are assessed in provinces where applicable.

The Bad...

Tax implications — There are potential tax consequences. For example, if real estate is owned jointly between a parent and a child who already owns a residence, there may be a proportionate loss of the principal residence exemption. Adding a joint owner to a property could also result in the incidence of land transfer tax. For jointly-owned investment accounts, even if tax slips may be received in the names of the joint owners, the Income Tax Act (Canada) could require attribution of the income earned and owned by one taxpayer to another taxpayer for tax purposes, based on who provided the capital to acquire the assets in question. Depending on the circumstances, adding another party (such as an adult child) as joint owner could also result in the recognition of some gains or losses for tax purposes.

Loss of control — Joint ownership may mean that the original owner no longer has total control over the assets. With property, decisions regarding its maintenance or sale need to be made jointly. With financial accounts, such as a bank account, a joint owner would generally have the ability to withdraw or use funds.

The Potentially Ugly...

Estate equalization issues — If the majority of assets are held in joint ownership (outside of the estate), the estate may not have sufficient assets to fund legacies or gifts outlined in the will, or potential tax liabilities due. If an estate is to be divided equally but a jointly-owned asset hasn't been considered, expensive and divisive legal action could result. It also may not be clear if a joint-tenancy arrangement was done for ease of administration or if a change in beneficial ownership was intended.

Exposure to creditors or matrimonial claims — Jointly-held assets may be exposed to claims by a joint owner's personal or business creditors, or ex-spouse. This could force the sale of an asset to cover the payment of debts or claims of the joint owner.

As always, please seek the advice of legal and tax advisors as it relates to your particular situation.

*Not applicable in Quebec, where the laws differ and an automatic right of survivorship does not exist.

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