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Estate Planning through Joint Ownership—Penny Wise and Pound Foolish?

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One of the most common issues estate lawyers deal with arises when a client asks that a property be transferred into joint names-- often with a child of the client-- as part of their estate plan. Usually this comes about because the client has been told by someone that this is a good way to avoid Estate Administration Tax ("probate fees"). Sometimes the client wants to put a relative on a bank account as a joint owner, for the same reason or to avoid the account being "frozen" on their death. This type of planning relies on the fact that jointly held property ordinarily becomes the property of the surviving owner(s) when another joint owner dies. For a number of reasons, transferring assets into joint names is often a costly mistake.

One problem with doing this is that the original owner loses control of the asset. The new joint owner may, for example, refuse to agree to a sale of a property, or in the case of a bank account, may take money out of the account without the original owner's permission. If the new joint owner has creditor problems, the creditor can attempt to seize the property, or at least the new joint owner's interest in it, and this could lead, in the case of real estate, to the property being sold to satisfy the creditor's claim. An example is the situation where the new joint owner's marriage has broken down and the person's spouse claims an interest in the jointly held property. Yet another problem is that on the client's death, it may not be clear whether the intention was to simplify the estate administration or also to have the surviving joint owner become the sole owner of the property. This can lead to disputes between the surviving joint owner and the other beneficiaries. And, if the new joint owner dies before the original owner of the asset does, then the whole purpose of putting the property into joint names is defeated. Lastly, there could be income tax issues, because Revenue Canada may consider there to have been a 'disposition' of a property for tax purposes if property is transferred into joint names.

These are just a few of the potential problems that can ensue if a person transfers property they own into joint names with another person. In an attempt to avoid one (often small) problem, they create larger ones.

When making plans for your estate, you need to think about all of the ramifications. Consideration must be given to how you own your property, and how you have designated beneficiaries of assets such as RRSPs, RRIFs, life insurance policies and pensions. The preparation of a will that properly takes into account these issues, and of powers of attorney for personal care and property, is essential. Failing to look at your estate plan as a whole can be problematic and often disastrous for your beneficiaries. The best way to ensure that your estate plan works and will carry out your intentions is to review it with and get advice from a lawyer. That is the best way to make sure that you leave benefits, not problems, for your beneficiaries.