

Tip Sheet

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Law and Practice Update

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THE INTERSECTION OF FAMILY, REAL ESTATE, AND WILLS AND ESTATES

Wills and Estates Tip

Tip 1: Joint property issues: Clients may decide for any number of reasons that they want to transfer property into joint names. While, by no means an exhaustive list, some examples may include:

- elderly parents wanting to put a child on title to avoid probate;
- a young adult wanting to add a parent on title in order to qualify for a mortgage or to protect their investment from a live-in partner; or
- newlyweds wanting to transfer their respective properties into joint names.

The clients may or may not understand the far-reaching implications of these decisions and lawyers receiving these requests need to be alert to the risks and consequences, beyond the simple act of conveyancing in order to protect themselves and their clients.

Tip 2: Document the intention of the parties

Where title to a property is transferred into joint names and the intention is NOT to gift the property to the survivor, but rather for the transferee to hold the property in trust for others (as in the case with elderly parents to avoid probate) Determination of ownership on death is more than just looking at the title. Legal ownership may be different than beneficial ownership. Consideration should be given to including an acknowledgement as to the intention (such as a trust) or acknowledgement of beneficial ownership.

Tip 3: Expose to creditors the claims by one of the registered owners

Where property is held jointly, the property in question may be vulnerable to claims of creditors of any one of the parties – regardless of the intention of the parties.

Tip 4: Potential loss of ½ of the personal residence exemption.

There may be tax consequences with respect to the personal residence exemption when the property in question is not the primary residence of all parties.