

The Corporation as a Joint Tenant



By Brian Madigan LL.B.

From time to time people wonder whether a corporation can hold title as a joint tenant. After all, it can't really die?

Strange question, in fact, I have been asked this several times by students, always preceded with the self-deprecating comment along the lines that "I know this is a silly question...."

First, people speculating about such trivia probably need to get a life! But, since the question comes up frequently enough, let's have a look at the law.

Under the common law, a corporation is to have all the same rights as a natural person. So, at first blush, this should mean that a corporation would have such a right. Obviously, it could inherit. However, what about the other part of the joint tenancy arrangement, that is, if it died. You might think that it can't die, but corporations can be dissolved legally, and that is the equivalent of biological death.

Actually, the law related to this question is set forth in the *Conveyancing and Law of Property Act*:

Joint tenancy of corporation and an individual

43. (1) A corporation is and has been capable of acquiring and holding real or personal property in joint tenancy in the same manner as if it were an individual, and, where a corporation and an individual, or two or more corporations, became or become entitled to any such property under circumstances or by virtue of any instrument that would, if the corporation had been an individual, have created a joint tenancy, they are and have been entitled to the property as joint tenants, but the acquisition and holding of property by a corporation in joint tenancy has been and is subject to the like conditions and restrictions as attach to the acquisition and holding of property by a corporation in severalty. R.S.O. 1990, c. C.34, s. 43 (1).

Devolution on dissolution of corporate joint tenant

(2) Where a corporation is joint tenant of property and the corporation dissolves, the property devolves on the other joint tenant. R.S.O. 1990, c. C.34, s. 43 (2).

So, the law appears to be as follows:

- A corporation may hold title as a joint tenant
- The other party may be an individual or a corporation
- An individual who dies is deemed to convey his interest to the surviving joint tenant
- A corporation which is dissolved is deemed to convey its interest to the surviving joint tenant
- The last joint tenant, either individual or corporation takes the entire property

This presents some interesting opportunities:

- 1) hold title with yourself, A and A Corporation, and your company inherits your property,
- 2) add a spouse, so that, A, S (spouse) and A Corporation all hold as joint tenants; ultimately A Corporation will inherit,
- 3) consider avoiding the severance provisions under the *Family Law Act* for matrimonial homes.
- 4) Consider various Income Tax Act opportunities that may arise.

You will recall that there is a provision in the Family Law Act that severs the joint tenancy if a matrimonial home is held by a spouse and another person. Here is what the Act says:

**Spouse without interest in matrimonial home
Joint tenancy with third person**

26. (1) If a spouse dies owning an interest in a matrimonial home as a joint tenant with a third person and not with the other spouse, the joint tenancy shall be deemed to have been severed immediately before the time of death. R.S.O. 1990, c. F.3, s. 26 (1).

So, this is interesting, in #1 above, 50% that property would be available. The severance occurs but the 50% held by A Corporation remains intact. In #2, the severance provision does not apply. The reason is because the spouse holds an interest. However, you will note that there is a virtual guarantee that A Corporation will inherit.

Let me throw in another interesting aspect. A corporation can be dissolved, but it can also be “revived”. This is just like coming back from the dead.! When you sit down and think about it, there are some very interesting considerations and opportunities.

You might want to consider whether the use of a corporation would be of any

assistance, in terms of your long term estate or succession planning.

While we started out with what was a rather hypothetical student question, it really just points out that there are no silly questions.

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