



JOINT TENANCY: A Poor man's Will

By Brian Madigan

Question: *I am concerned about my mother. Ten years ago, she married a man who now seems to be in ill health. He has operated his own business for over thirty years. Their only real asset is the house. He refuses to make a Will and claims that my mother is protected because the house is in joint tenancy. Is this true?*

Answer: No, joint tenancy is not really the answer and it offers no protection for your mother concerning his interest in the house. This arrangement is sometimes referred to as a "poor man's will".

When property is held in joint tenancy between a husband and wife, the property is immediately vested in the wife at the time of death. However, this just means the husband's half; she already owns her own half.

The only step necessary to effect a legal transfer, is to register a death certificate issued under the Vital Statistics Act (this will take 30 days) or Funeral Director's certificate (this should be available immediately). Upon registration, your mother will be able to convey the entire property (by her signature alone) to a third party.

Is there any reason why your mother might not get her husband's share of the house? Yes, there are many reasons, however the most important might be that is his only asset, and all of his debts have to be paid out of it.

Essentially, there are four types of debts that have to be considered:

- 1) executions (these are past judgments filed against the husband),
- 2) outstanding taxes,
- 3) obligations arising under the Family Law Act and the Succession Law Reform Act, and
- 4) outstanding but unresolved statutory, contractual and tort liabilities.

Outstanding taxes are a real issue and could be quite significant. Since the husband was self-employed, there might have been a sizable tax deferral amounting perhaps to 2 ½ years income tax. Now, that has to be paid! Was

he collecting GST or PST? It all has to be paid when he dies! Any deferred capital gains? Well, it can't be deferred any longer. Was this property his principal residence for tax purposes? If not, it's taxable.

What about the Family Law Act? Fortunately, it looks like your mother as surviving spouse is covered. But, that's only part of the story. What if there were a first wife, two children of the first marriage, an out-of-wedlock child, a disabled brother, and an elderly mother. The bad news is that they can all claim under the Family Law Act. Their claims will be quantified (that is converted into money) and treated as if they were debts against the husband's one half of the house prior to death.

To make matters worse, this self-employed gentleman operated a business as a sole proprietor. Now, all debts of the business also effect his share of the house.

Let's assume that he had the good sense to incorporate his business. Still, he is personally liable for 6 month's worth of wages to his employees as a Director of his company. And, your mother might be liable for this same amount too, if she too was a Director.

There are legal procedures available to enforce these liabilities as against the single asset of the estate being his one half share of the house held in joint tenancy. After satisfaction of all the debts, the surviving spouse is entitled to the remainder of the husband's equity in his share of the house.

This gentleman should see a lawyer in order to effect a proper estate plan. His belief although well-intentioned is not sufficient.

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