

FROM THE DESK OF:

David Bardal, CLU, CH.F.C., CFP
Senior Financial Planning Advisor

Juana Baldwin, CFP, CHS, RRC
Financial Planning Advisor



Assante Financial Management Ltd.

HAPPY ★ NEW ★ YEAR

We would like to wish you a year of health and happiness. We look forward to working with you for another year.

We understand that your financial situation is unique. From investment, tax, and risk management, to retirement, estate and legacy planning, we want to work with you to ensure that you and your family are well taken care of, now and in the future.

As always, call our office with any questions you may have, or to schedule a meeting, or to review your plan, update your goals.

Upcoming Events:

**Business Owners Luncheon –
Tuesday, January 19th**

**Things to note:
TFSA Limit for 2016 - \$5,500**

**RRSP Deadline for 2015 deposits –
February 29th, 2016**

JOINT TENANCY CAN ADD COMPLICATIONS

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Distribution of an individual's estate can take many forms. Assets can be gifted before death or distributed after death. Specific assets can be directed to specific heirs or the residue of the estate could be divided among a group of heirs. Methods for achieving these distributions can vary.

A common estate planning strategy in Canadian common-law provinces is the use of shared ownership. Property titles can be registered as "joint tenants with rights of survivorship" or "tenants in common".

A "tenants in common" strategy provides each owner with an undivided interest in the property, allowing each to deal freely with their interest. As such, each of the tenants in common can bequeath their personal share of the asset through their personal will.

Assets held in "joint tenancy" pass automatically to the surviving tenant(s) upon the death of one owner. This automatic transfer allows the surviving owner(s) to assume direct title of the asset at the time of the testator's death. The asset does not pass through the testator's estate. The benefit of this type of property

title is the opportunity to avoid the need for probate, which results in public disclosure of the estate's assets, it may place assets within the reach of creditors, and, in some provinces, result in probate fees.

The strategies sound simple. However, lack of documentation or clarity around intentions can cause complications. For example, there are situations where an individual may place an asset into joint tenancy with the intention of making the after-death transfer more efficient through the avoidance of probate. The testator may nonetheless intend that the joint tenant share the property with the other beneficiaries of the testator. A recent decision of the Ontario Court of Appeal (*Mroz v. Mroz*) highlights the challenges of a joint tenancy strategy.

In 2004 Kay Mroz executed a new will and simultaneously transferred title of her home into joint tenancy with her adult daughter, Helen. The property transfer resulted in Kay and Helen owning the home in joint title although Kay's lawyer had recommended title be registered as tenants in common. There was an inter-relationship between the transfer of the home into joint title and the bequests set out in Kay's Will.

In her will, Kay bequeathed her share of the property (which she now owned jointly with Helen) to Helen provided that within one year of her death, Helen pay \$70,000 to each of Kay's grandchildren Adrianna and Martin (the children of Kay's deceased son). It was noted in the will that "these legacies shall constitute a first charge on my property in favour of Adrianna and Martin until the legacies are paid." In addition, Kay bequeathed \$50,000 to her nephew Richard and his family. Helen and Richard were named as executors of Kay's estate.

A short time after Kay's passing in 2005, Helen, as the sole owner of the property, sold the home for approximately \$476,000 and retained the proceeds. The property passed to Helen outside of the estate and she chose not to discuss the transaction with Richard, the co-executor of the estate. Apart from the property, Kay's estate was valued at about \$3,200.

Martin and Adrianna immediately undertook legal proceedings, challenging the validity of the 2004 will. The outcome of the initial trial resulted in a decision that upheld the validity of the will but required Helen to pay the \$70,000 amounts owing to each of Martin and Adrianna. The trial judge found that Helen had successfully refuted the presumption of creation of a resulting trust at the time the property was transferred into joint title. However, the trial judge found that Kay had created a testamentary obligation on Helen, and ordered that Helen pay the amounts owing to Kay's grandchildren as outlined in the will.

Helen appealed the court's decision, arguing that she should receive the property outright (with no liability to pay the grandchildren) because the trial judge found there was not a presumption of a resulting trust. The grandchildren also appealed, arguing that the trial judge was wrong in his decision with respect to a resulting trust.

The appeal judge reaffirmed the trial court's decision that the will was valid, and that there was no undue influence asserted by Helen when Kay chose to make testamentary changes in 2004.

The appeal court, however, disagreed with the trial court and found that Helen held the property on resulting trust. Earlier precedence set out in *Pecore v. Pecore* found that "When a parent gratuitously transfers property to his or her adult child, the law presumes that the child holds the property on resulting trust for the parent. The burden of rebutting the presumption is on the child." It is up to the courts to weigh the evidence in attempting to ascertain the parent's intentions at the time of the transfer. In the *Mroz* case, the appeal court found that the evidence indicated that Helen was to use the proceeds from the sale of the property to fund bequests set out in the will. As such, when Kay passed, the property formed part of her estate. The trust obligation only arose at the time of Kay's passing and, as such, was testamentary in nature.

The appeal court concluded that the property formed part of Kay's estate on her passing and should have been disposed of in accordance with her will. Helen had an obligation to sell the property and use the

funds to complete the \$70,000 bequests owing to each of Martin and Adrianna. Failure to do so was a breach of trust by Helen.

This was an important decision that adds clarity to the issue of joint tenancy. The judge concluded that had the presumption of a resulting trust been rebutted, “then the transfer of the Property was an *inter vivos* gift and Helen became solely entitled to the Property on Kay’s death by virtue of the right of survivorship. In that case, the Property would not have formed part of Kay’s estate and Helen would have no legal obligations in relation to the Property or the proceeds of its sale.”

Using joint title with the right of survivorship can be a valuable tool under some circumstances; however, care should be taken to understand all of the potential implications. While not discussed in this article, there could also be issues of a family law nature in respect to the child and child’s spouse, and tax implications of transferring the property into joint title. The Mroz case highlights the value of ensuring a testator’s wishes are well documented and understood by all parties. Even when a testator is clear as to his or her wishes, emotions can give rise to tremendous upheaval within families, particularly at the time of a parent’s passing. Simple decisions can become complicated court cases long after the estate plan was put in place.

This article was written by Deborah Kraft and Jim Kraft and was published in the 292-2015 issue of COMMENT. Posted with permission from the Financial Advisors Association of Canada (Advocis) and The Institute for Advanced Financial Education.

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Change your meeting time? Need a
copy of a statement or tax receipt?

Call our assistant Kathaleen
Vermette at (204) 977-8067 or email
at kvermette@assante.com

Kathaleen’s hours are :
Monday, Wednesday, Thursday – 9:00am – 4:00pm
and Friday – 9:00am – 1:00pm



As I write this, my wife and I are just back from a Caribbean cruise. Reality hits as we come back to much colder (albeit relatively warm for late November in Winnipeg!) temperatures.

As we head into the winter season, it seems to me that this is a very good time to take “the temperature” of our plans for the upcoming year. What goals might we set for 2016? Having said that, there are many goals we might consider; financial, experiential, spiritual etc.

We have a goal planning template that we would be pleased to share with you if this might be of interest. Please ask me at our next scheduled meeting.

5 GOLDEN RULES of GOAL SETTING

1. Set Goals the Motivate You
2. Set SMART goals
 - Specific
 - Measurable
 - Attainable
 - Relevant
 - Time Bound
3. Set Goals in Writing
4. Make an Action Plan
5. Stick with it – communicate your goal to someone who will help make you accountable! (like us!)



I recently came across this quote:

“Whether we want them or not, the New Year will bring new challenges; whether we seize them or not, the New Year will bring new opportunities.”

– Michael Josephson

It reminded me how important it is to ensure that we celebrate our team of friends and family as well as be aware of our financial situation. As we develop financial plans we believe it is important to get a good understanding of the “what ifs” and wherever possible to implement strategies to safe guard our plan against them. Being aware and prepared can help reduce the stress and impact life’s challenges have at least on the financial side of things. Being financially aware may also help us to take advantage of some of the great opportunities that come our way.

I hope that your 2016, is full of family and friends, health and happiness, the strength to conquer challenges that come your way, and the awareness to enjoy new opportunities. Happy New Year!

If you want to create, update or review your financial plan, call our office at to book your next appointment.

HOLIDAYS & BUSINESS TRAVEL

Office Closed:

- Louis Riel Day – February 15th, 2016

Juana Out of Office:

- Vacation – February 1st – 5th, 2016

Both David and Juana are always happy to meet with new people and provide a second opinion on their current financial strategies.

**Do you know someone we can help?
Have them give us a call!**

Challenges are what
make life interesting.

Overcoming them is
what makes it
meaningful.

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