

## REAL ESTATE IS MOST PEOPLES LARGEST INVESTMENT

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"Not everything that can be counted counts,  
and not everything that counts can be counted"  
- Albert Einstein

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### KNOW THE PITFALLS OF TRYING TO AVOID PROBATE

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In my law practice I routinely prepare Wills and Estate documents, and it seems to me that the question most often asked by my clients during the 1990's was: "How do we avoid Probate Fees?" I thought this question had faded away, but recently, perhaps because of the increase in the value of residential real estate, it has surfaced again. The clients usually propose to avoid the Probate Fee (really a tax) and other Probate expenses by placing title to their residence in joint names with one or more of their children. This suggestion usually comes from neighbours, talk shows and other similarly reliable sources.

The word "joint" refers to joint tenancy, an arrangement where all of the owners have an equal interest in the asset, and on the death of any of them, the survivors own the whole. That is the rationale for this optimistic but short-sighted Probate avoidance scheme: ownership of the asset (usually the family home) passes automatically to the survivors and is not part of the estate of the deceased. In this process, the residence is not governed by the Will of the deceased, and accordingly is not involved in the Probate process, thus avoiding the Probate Fees on the value of the residence.

Does this sound too good to be true? In most cases it is -- life is generally more complicated than that. Over and above the basic presumption that the parent will die before the children, there are a number of reasons why this simple "solution" usually does not work. A few examples will illustrate some of the potential problems:

#### Potential Problems

I have not raised an often unspoken hazard in attempting to plan around tax statutes. The tax authority can change its rules at any time. The Probate Fee is presently 1.4% (in round numbers) of the value of the assets. If the Province of B.C. gets serious about Probate Fees, it can change the rate or the system of taxation. One need only think back to the bad old days of succession duties and gift taxes. None of these Probate avoidance schemes would have avoided those taxes.

The foregoing outlines just a few of the applicable issues. It does however illustrate some of the problems that arise with the notion of circumventing Probate Fees by putting your residence into joint ownership. There are techniques for dealing with the problems, but these techniques themselves add complication and expense. In short, the best solution for most individuals is simply to leave things as they are and to have a properly drawn Will. Perhaps Benjamin Franklin's old saying should be expanded to include complications and legal fees.

In reality, planning for your estate may be the most important legal step you ever take. Such a critical decision should not be taken lightly, and requires proper professional advice. This often includes input from your accountants and financial advisors. It should always include legal advice. At Johns Southward Glazier Walton & Margetts we are committed to assisting you in obtaining the estate plan that is right for you.

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