



Tax, Retirement &  
Estate Planning Services

### WEALTH TRANSFER STRATEGY #3

## Be careful with joint ownership

Placing non-registered assets into joint ownership with right of survivorship<sup>1</sup> is one of the most common methods of avoiding probate, and it can be effective in the right situation. However, there are some significant disadvantages with joint ownership that may outweigh the benefits. Fortunately, there are other probate-avoidance options available that help avoid the risks of joint ownership and provide other benefits as well.

### WHAT IS PROBATE?

Probate is an administrative procedure whereby the court confirms the validity of the will and the authority of the executors. Third parties, such as financial institutions, may require probate to ensure that the will presented is indeed the last will and testament of the deceased and that the executors have authority to act on behalf of the estate.

### THE BENEFITS OF AVOIDING PROBATE

All provinces except Quebec charge a fee or tax to probate a will, however, the fee in Alberta is capped to a minimal amount. This cost is based on the value of the estate and varies from province to province rising as high as 1.5 per cent in Ontario and 1.4 per cent in British Columbia.

In addition to the cost, the probate process can be a lengthy one, potentially taking months or years if the will is contested. Furthermore, once your will is submitted to court it becomes a matter of public record. That means that anyone can view your will and the confidentiality of your testamentary instructions has been lost.

<sup>1</sup> All other references to joint ownership mean joint ownership with right of survivorship. Joint ownership does not apply in Quebec.

Before transferring any assets into joint ownership there are a number of important issues that you should consider that may change your mind.

### **ADVANTAGES OF JOINT OWNERSHIP**

Each joint owner holds title to the whole of the asset. On the death of one joint owner, the asset transfers directly to the survivor. The asset does not form part of the deceased's estate and therefore avoids probate.<sup>2</sup> By avoiding the deceased's estate, the asset also avoids claims by creditors of the estate and challenges to the validity of the will.

Joint ownership is particularly effective with spouses as the Income Tax Act allows assets to be transferred between spouses on a tax deferred basis.

### **DISADVANTAGES OF JOINT OWNERSHIP**

Before transferring any assets into joint ownership there are a number of important issues that you should consider that may change your mind.

The addition of a joint owner, other than your spouse, will be considered a taxable disposition triggering a potential tax liability if capital gains are realized.

In addition, if the joint owner is your spouse all income and capital gains will be attributed back to you and if the joint owner is a minor child, all income, but not capital gains, will be attributed back to you.

The transfer into joint ownership will also result in a loss of control of the asset. Any decisions will now require the consent of the other joint owner.

As a result of the transfer you have exposed the asset to the creditors of the new owner if they get sued or file for bankruptcy. If the new joint owner is married, the asset could be subject to an equalization claim in the event of a marriage breakdown.<sup>3</sup>

If a home is involved, a portion of the principal residence exemption and eligibility under the Home Buyers' Plan (HBP) may be jeopardized.

Lastly, any tax liability triggered on the automatic transfer at death will become the responsibility of the estate. This should be considered when determining how to distribute your other assets. Beneficiaries under the will may have their entitlements unfairly reduced.

### **THE COMPLICATION**

It is important to distinguish between a true joint ownership arrangement and a resulting trust. Even though the asset is owned jointly by two individuals it may be possible that a resulting trust exists.<sup>4</sup> Some individuals register assets in joint ownership for convenience purposes – to enable one individual to manage the asset on behalf of the other. In this situation there is no intent to convey beneficial ownership to the other individual, which, is required to avoid probate. For example, an elderly parent may add an adult child as a joint owner onto a bank account to facilitate paying bills and writing cheques. However, when a parent dies, disputes can

<sup>2</sup> In Saskatchewan, jointly held property and insurance policies with a named beneficiary are included on the application for probate but do not flow through the estate and are not subject to probate fees.

<sup>3</sup> The rules for equalization or division of assets upon marriage breakdown vary by province. Individuals should consult with their legal advisor.

<sup>4</sup> A presumption of resulting trust applies to gratuitous transfers and at death the asset becomes the asset of the estate of the transferor.



often arise as to whether or not the parent intended to give beneficial ownership to the child or whether a resulting trust exists.

If a resulting trust exists, probate tax will apply. The deceased will not have given a beneficial interest in the transferred asset to the other owner and therefore there would be no right of survivorship. Thus, the asset remains in the estate and its value is included in the calculation of probate tax.

It is important for an individual who wishes to make a gratuitous transfer to another person that the intention of the transferor is captured. The documented intention can clarify whether the transfer was meant to be a gift or for the transferred asset to be held in trust. There has been a number of lawsuits regarding transfers to joint ownership and therefore documenting intention is one way to address potential litigation claims.<sup>5</sup>

Joint ownership is becoming increasingly complicated and is not necessarily a simple and easy way to transfer wealth and avoid probate. While it may be effective with spouses it is generally not recommended in other situations.

## ALTERNATIVES

Non-insurance investments such as Bank issued Guaranteed Investment Certificates and mutual funds are often held jointly to avoid probate. Fortunately, for those interested in avoiding probate there are alternatives. A segregated fund contract or insurance company Guaranteed Interest Contract

(GIC) offers the ability to avoid probate without using joint ownership, as well as other advantages, while also avoiding many of the disadvantages of joint ownership.

When a beneficiary other than your estate is named, assets bypass your estate and therefore bypass probate, and are paid directly to the beneficiary. Payment may be made quickly, usually within two weeks of receiving sufficient proof of death. A segregated fund contract or insurance GIC is easy to set up. You can even change the beneficiary at any time without requiring his or her signature, provided the beneficiary is not named irrevocably.

Because you are not adding an owner you maintain complete control of the asset and do not trigger a taxable disposition.

As opposed to exposing your asset to the creditors of the joint owner, a segregated fund contract or insurance GIC with a beneficiary of the family class<sup>6</sup> offers you the potential for creditor protection.

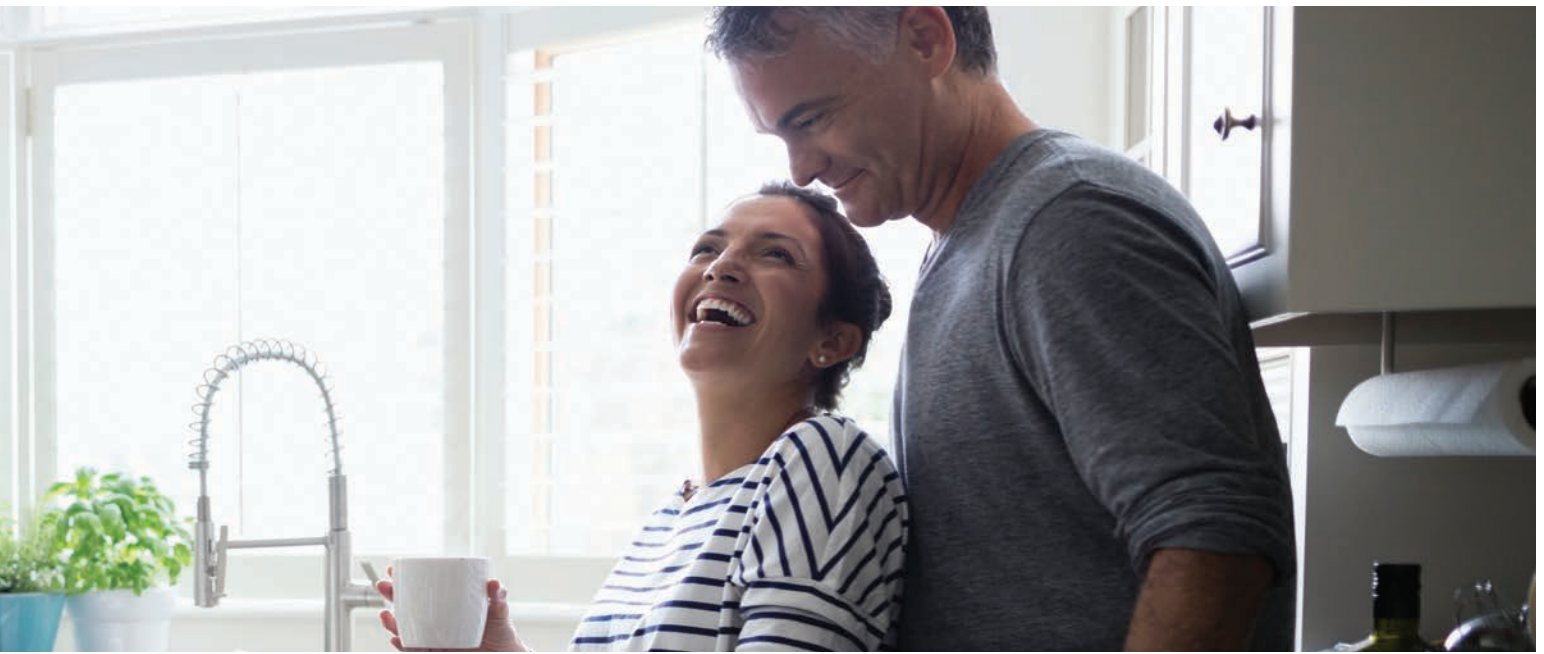
The beneficiary designations are extremely flexible. You can divide the asset however you like, structure some or all of the payments in the form of an annuity or establish a trust on your death that will qualify as a testamentary trust<sup>7</sup>.

Segregated fund contracts also offer the benefit of maturity and death benefit guarantees on your investment.

<sup>5</sup> Court decisions have dealt with whether a gift was made or an asset was held in trust for others.

<sup>6</sup> In provinces other than Quebec, a family class beneficiary is any of the spouse, child, grandchild or parent of the annuitant.

<sup>7</sup> If the trust qualifies as a qualified disability trust (QDT) as defined in subsection 122(3) of the *Income Tax Act* (Canada), it will benefit from being taxed at the graduated tax rates.



Joint Ownership	The Segregated Fund Contract and Insurance GIC Alternative
<b>Advantages</b>	<b>Advantages</b>
On death avoids estate and probate	On death avoids estate and probate
Tax deferred transfer to spouse	Tax deferred transfer to spouse <sup>7</sup>
<b>Disadvantages</b>	Potential creditor protection
Taxable disposition with non-spouse	Easy and free to change beneficiary
Loss of control	A trust named as a beneficiary may qualify as a testamentary trust
Exposed to creditors of new owners	Flexibility in structuring beneficiary payouts
May jeopardize principal residence exemption or HBP	Capital guarantees on maturity and death
Potential litigation – joint ownership vs. resulting trust	
Probate may apply where beneficial interest is not transferred	

<sup>7</sup>If ownership transfers to a spouse and the contract continues.

### IDEAL CANDIDATES

Investors should consider segregated fund contracts or insurance GICs as an alternative to joint ownership if they want:

- The potential to avoid probate and the resulting fees, delays and lack of privacy
- To maintain control of their asset
- The potential for creditor protection
- The ability to create a testamentary trust at death

### TAKE ACTION

If you are looking for these features in an investment:

- Contact your advisor
- Decide how much you want to invest
- Name your beneficiaries and consider testamentary trusts
- Decide which segregated fund contracts – or insurance GICs – meet your investment goals

## **INVESTMENT OPTIONS WITH MANULIFE INVESTMENTS**

Manulife and its subsidiaries provide a range of investments and services including:

**Manulife Segregated Fund Contracts** combine the growth potential offered by a broad range of investment funds, with the unique wealth protection features of an insurance contract. Through Manulife segregated fund contracts, investors can minimize their exposure to risk through income, death and maturity guarantees, potential creditor protection features, and estate planning benefits – all from a single product or insurance contract.

For conservative investors looking to help grow their wealth but who are also concerned about minimizing risk, Manulife segregated fund contracts can provide an ideal solution.

**The Manulife Investments Guaranteed Interest Contract (GIC)** offers competitive rates plus investment options that include Basic, Escalating Rate and Laddered GIC Accounts. Investors benefit from a guarantee on their principal investment and from several different investment options that can diversify and add flexibility to their portfolio. Manulife Investments GICs can be an ideal solution for conservative investors looking to help grow their wealth, but who are also concerned about minimizing risk.

To find out more about this innovative solution,  
speak to your advisor, or visit [manulife.ca/investments](http://manulife.ca/investments)



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