

“THE TIES THAT BIND”

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It is difficult to escape television and radio commercials recommending that everyone should have a valid Last Will and Testament, which deals with transfer of assets upon death. This is sound advice. However, it has become increasingly popular for a parent to transfer certain assets to children during his lifetime. For example, bank and investment accounts and property are often transferred into the joint names of parent and child; upon death, these assets can be immediately transferred to the surviving child.

Why do people do this? Perhaps it is to avoid probate fees and the legal expense that would be incurred in making application for a Grant of Letters of Probate to give effect to a Will or perhaps (in the words of one of our clients) "because my son is gonna end up with everything anyway!" Sometimes a parent will add a child's name to an asset simply because he needs help managing that asset, not necessarily because he wants his child to own or control it. Regrettably, these decisions are made without the benefit of legal or tax advice and, therefore, both the parent and child may suffer negative consequences. According to Dalbir Rai, tax partner at Ellis Foster, Chartered

Accountants, "When an interest in an asset is transferred from a parent and registered in the name of a child, most people overlook the fact that Canada Customs and Revenue Agency will treat this as a "disposition" pursuant to the Income Tax Act of Canada as ownership has transferred." This transfer occurs not on the date of the parent's death, but rather on the date that the interest was registered in the child's name. For example, if a brokerage account is transferred into the joint names of a parent and child, the child is obligated to report his portion of any income generated from the account in his personal Income Tax Return as of the date the account was registered in his name. He cannot wait until his parent's death to report this income. Further, upon transfer of the asset in the future, CCRA will look at the value of the asset as of the date of transfer, not as of the date of death.

Our experience has also revealed other problems. In one case, a child's name was added to a safety deposit box account. Upon death of his parent, that child immediately gained access to the box and retrieved its contents, all contrary to the parent's true purpose and intent. The parent wished the contents of the box to be divided equally amongst all his children as provided in his Will, not just to the child whose name was added to the account. What if the relationship between the parent and child deteriorates during the course of the parent's lifetime? One cannot simply reverse transactions involving transfer of

assets. For example, one of our clients transferred an interest in his home to his children. An argument ensued, and the children made Court application to sell the home. In this case, transfer of ownership conferred the right of possession and control over the house to the children.

Incidentally, adding a child's name to an asset can also result in that child being responsible for liabilities that may attach to such an asset. Owning an interest in a home may result in a child being responsible for discharging a mortgage registered against same. If a child's name is added to a motor vehicle, the child, as co-owner, could also be liable for any claims arising out of an accident (even though the child was not driving the vehicle at the time of the accident).

All of the above point to the need for proper planning, sound legal and tax advice before adding children's names to assets. Parents may attract unintended and undesirable consequences despite the best of intentions. For parents who have accumulated some wealth, estate planning is a critical part of preserving the wealth for the next generation. Without proper estate planning, the tax liabilities left on passing could substantially reduce (and in some cases, wipe out) the wealth that has been built in the hope of leaving a legacy for loved ones. The decisions that we make during our lifetime are clearly "The Ties that Bind"!