



Real Estate Primer

WITH LAURA HOLLAND

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Adding Children on Title

by Laura Holland, Associate Counsel

"I want to add my children on title to avoid Estate taxes".

This is a request we receive time and again. However, there are costs involved with this strategy that may far exceed any financial benefit. This decision should not be made lightly. If you or your clients are considering adding their children on title, please share this with them.

CONSIDERATIONS PRIOR TO ADDING CHILDREN ON TITLE

1. How much does someone pay for "Estate Taxes"?
2. Loss of control
3. Claims by your children's creditors
4. Capital Gains for children
5. Estate issues

"ESTATE TAXES"

In B.C., we do not have "Estate Taxes" as such. However, when someone dies, there are probate fees charged for any assets in his or her estate. This would include a home in the deceased's name. The probate fees are currently 1.4% of the value of the estate. On a \$500,000 home, this amount is \$7,000. The amount is not insignificant, but may be worth paying given the other negative consequences of adding your children on title.

LOSS OF CONTROL

Our first concern when someone is adding new people to his or her title is the loss of control of the original owner. Any additional owners will have to sign for the sale of the property or to renew a mortgage on the home. This also means that those new owners (the



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children) can refuse to sign documents to sell or mortgage the home, even if this is against the parents' wishes. In our experience, many parents are interested in saving taxes, but still wish to maintain full control of their home.

CLAIMS BY YOUR CHILDREN'S CREDITORS

Consider that if you add your child or children as an owner of your home, your home now becomes part of their assets. This means that if your child owes money to someone, that creditor can make a claim to get paid back from the equity in your home. Possible claimants include ex-spouses, business partners, a victim of a motor vehicle accident where your child was found responsible, banks and credit card companies. In the worst case scenario, your home may be sold to pay your children's financial obligations.

CAPITAL GAINS WILL BE PAYABLE BY YOUR CHILDREN

If you own an interest in a property that you do not live in, this property is considered an investment. When it is sold, you must pay income tax on the capital gains on any increase in value accruing since the time you acquired the property. The following is an example of the tax that might be payable by a child that you add to the title of your home.

A. Adding child on title

Facts

1. Mrs. Jones owns her own place by herself;
2. The current value of her home is \$500,000;
3. She adds her son, the incorrigible red-haired Sam, to the title as joint tenant to save "Estate Taxes";
4. She lives for another 10 years;
5. The property increases in value by \$100,000 in that time;
6. When Mrs. Jones dies, the property is transferred to Sam as the surviving owner;
7. Sam can't live in the property because he now works in Alberta. Sam sells it 3 months later for \$600,000.

Costs to family

The property is transferred to Sam as the surviving owner. When the home is sold, Sam will have to pay capital gains on his 1/2 of the property. The gain on his half of the property is 1/2 of \$100,000 or \$50,000. He will report on his tax return a gain of \$25,000:

$$\text{Capital gain reported} = \frac{1}{2} \times \$50,000 = \$25,000.$$

Sam will pay tax on the additional \$25,000 at his marginal tax rate. If he is in the 40% tax bracket, he will pay **\$10,000** in tax on the capital gain.

B. Leaving home in parent's name alone

Facts

1. Mrs. Jones leaves her home in her own name until she dies;
2. When she dies, the property is worth \$600,000.
3. Sam can't live in the property, so it is sold after Mrs. Jones passes away.

Costs to family

Because the home was Mrs. Jones' primary residence, there is no capital gains tax payable.



However, her Estate will pay probate fees of 1.4% of the value of the home.

$$\text{Probate fees} = 1.4\% \times \$600,000 = \$8,400.$$

As in this example, the probate fees are often lower than the capital gains payable by the surviving children.

ESTATE ISSUES

If you add only some of your children to title, this may create problems with your estate plan. There is no obligation for the children on title to share the home with their other siblings when a parent dies. Adding children on title should be done only as part of a larger estate plan and with consideration for what has already been written in your will.

SUMMARY

There are risks and potential costs involved in adding your children on title to your home. These may be more costly than the probate fees that will be paid by your estate. Please speak to a legal professional about these issues before rushing into this decision.

Disclaimer

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