

## JOINT TENANCY IN CANADA:

# UNDERSTANDING THE BENEFITS AND IMPLICATIONS



Joint tenancy is a common form of property ownership in Canada, often chosen for its convenience and the legal benefits it offers. It is particularly popular among couples and family members who wish to share ownership of a property. Understanding joint tenancy, its advantages, disadvantages, and legal implications, is crucial for anyone considering this form of ownership.

## What is Joint Tenancy?

Joint tenancy is a legal arrangement in which two or more individuals hold equal ownership rights to a property. Key features of joint tenancy include:

- 1) **Right of Survivorship:** When one joint tenant dies, their share of the property automatically passes to the surviving joint tenants. This process bypasses probate, simplifying the transfer of ownership.
- 2) **Equal Ownership:** All joint tenants have an equal share in the property. Regardless of how much each person contributes financially, ownership is split evenly.
- 3) **Unity of Title, Time, Interest, and Possession:** Joint tenants must acquire their interest in the property at the same time, through the same deed, with equal interest, and with equal rights to possess the whole property.

## Advantages of Joint Tenancy

- 1) **Simplified Transfer of Ownership:** The right of survivorship feature means that property ownership transfers automatically to surviving joint tenants without going through the probate process. This can save time and legal costs.
- 2) **Avoiding Probate Fees:** Since the property does not pass through probate, joint tenants can avoid probate fees, which can be substantial.
- 3) **Ease of Management:** Joint tenancy allows for shared responsibility in managing and maintaining the property. This can be particularly beneficial for family members or couples.
- 4) **Financial Protection:** In some cases, joint tenancy can provide a form of financial protection. For example, if one joint tenant faces financial difficulties or debts, creditors may not be able to claim the property if it passes to the surviving joint tenant upon death.

## Disadvantages of Joint Tenancy

- 1) **Lack of Flexibility:** Joint tenancy requires equal ownership shares, which may not be ideal if one party contributes more financially. Additionally, selling or refinancing the property typically requires consent from all joint tenants.
- 2) **Potential for Disputes:** Disagreements among joint tenants about property management or future planning can lead to conflicts. Resolving such disputes can be complex and costly.
- 3) **Impact on Estate Planning:** Joint tenancy can complicate estate planning, particularly if there are multiple heirs. The right of survivorship overrides any instructions in a will regarding the property.
- 4) **Tax Implications:** Transferring a property into joint tenancy can trigger capital gains tax if the property's value has increased since it was originally purchased. This is an important consideration for tax planning.

## Legal Considerations

- 1) **Severance of Joint Tenancy:** Joint tenancy can be severed, converting the ownership into a tenancy in common. This can occur voluntarily, through mutual agreement, or unilaterally by one joint tenant. In a tenancy in common, each owner has a distinct share of the property that can be sold or bequeathed independently.
- 2) **Spousal Rights:** In the context of family law, joint tenancy may be subject to division in the event of a divorce or separation. Understanding provincial laws and how they affect property division is crucial.
- 3) **Inheritance Issues:** While the right of survivorship provides clarity on ownership transfer upon death, it may not align with the deceased's overall estate plan. Consulting with an estate planner can help align joint tenancy with broader estate planning goals.

## Conclusion

Joint tenancy is a powerful and convenient form of property ownership in Canada, offering benefits such as simplified ownership transfer and avoidance of probate fees. However, it also comes with potential downsides, including inflexibility, potential tax consequences and disputes among owners. Before entering a joint tenancy arrangement, it is essential to carefully consider these factors and consult with legal and financial advisors to ensure it aligns with your overall financial and estate planning objectives.

By understanding the benefits, disadvantages, and legal nuances of joint tenancy, you can make informed decisions that best serve your interests and those of your co-owners. Properly navigating joint tenancy can lead to effective property management and a smoother transition of ownership, providing peace of mind for all parties involved.

## Our Partners at Advisors with Purpose can help you and answer your questions

They can help you create a plan for your Will that not only considers the best tax strategies but also ensures it reflects your life, faith and family. Their services are offered to you at no cost, it is fully confidential, there is no obligation, and they will never sell you any-thing. For more information or to schedule an appointment with one of their advisors, please contact them at [plan@advisorswithpurpose.ca](mailto:plan@advisorswithpurpose.ca)

*All figures are general and for illustration purposes and have been rounded to the nearest dollar. It should not be considered as advice for your own situation. Please consult a professional before making any decisions*