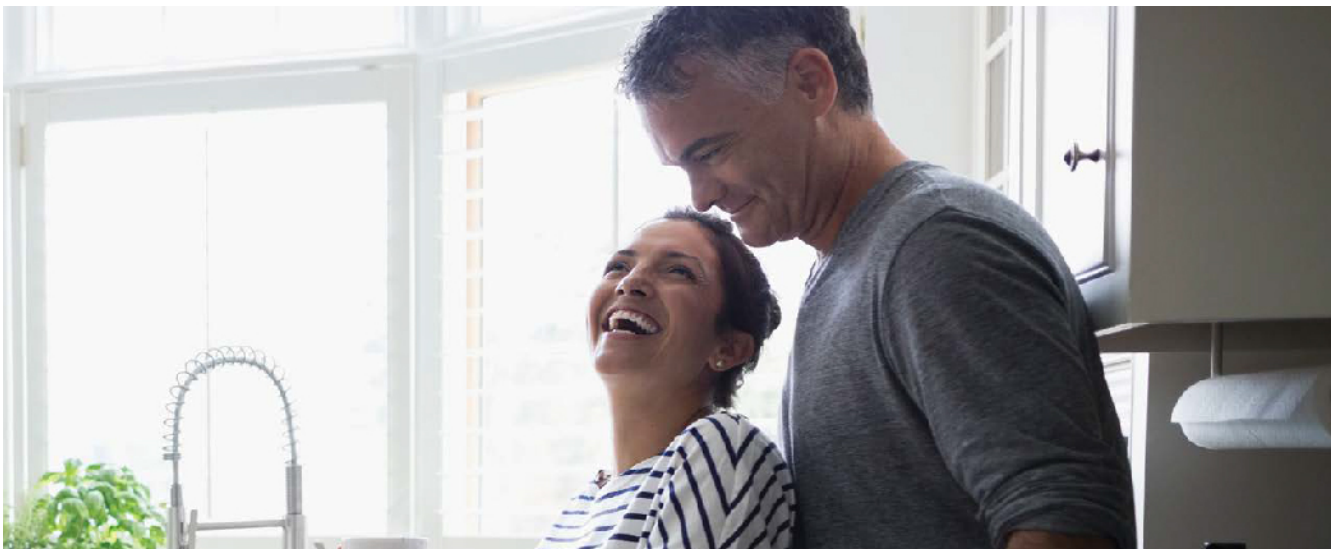


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# Be careful with joint ownership



## **Wealth Transfer Strategy 3**

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 options available that help avoid the risks of joint ownership and provide other benefits as well.

# What's probate?

Probate is an administrative procedure whereby the court confirms the validity of a will and the authority of the executors. Third parties, such as financial institutions, may require probate to make sure 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.

## Benefits of avoiding probate

All provinces except Manitoba and Quebec charge a fee or tax to probate a will; however, the fee in provinces such as Alberta is capped to a minimal amount. In some other provinces, this cost varies based on the value of the estate, rising as high as 1.695 per cent in Nova Scotia, 1.5 percent 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 that the confidentiality of your testamentary instructions has been lost.

## 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 doesn't 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* (Canada) allows assets to be transferred between them on a tax-deferred basis.

# Disadvantages of joint ownership

Before transferring any assets into joint ownership, there are a few important issues 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.

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

A 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 a transfer, you'll expose 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's 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's 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 to a bank account as a joint owner to facilitate paying bills and writing cheques. However, when a parent dies, disputes can often arise as to whether the parent intended to give beneficial ownership to the child or if a resulting trust exists.

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

It's important for an individual who wants to make a gratuitous transfer to another person that the transferor's intention 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've been a number of lawsuits regarding transfers to joint ownership; therefore, documenting intention is one way to address potential litigation claims.<sup>5</sup>

Joint ownership is becoming increasingly complicated and isn't necessarily a simple and easy way to transfer wealth and avoid probate. While it may be effective with spouses, it isn't generally 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 the beneficiary's signature, provided the beneficiary isn't named irrevocably.

Because you're not adding an owner, you maintain complete control of the asset and don't 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 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.

Joint Ownership	Segregated fund contract and 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>8</sup>
<b>Disadvantages</b>	Potential creditor protection
Taxable disposition with non-spouse	Easy and free to change beneficiary
Loss of control	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 isn't transferred	

## 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
- potential creditor protection
- the ability to create a testamentary trust at death.

## Take action

If you're 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

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

## Investment options with Manulife

Manulife and its subsidiaries provide a range of investments and services.

**Manulife Investment Management 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 segregated fund contracts, investors can help 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, segregated fund contracts can provide an ideal solution.

A **Manulife Investment Management guaranteed interest account (GIA)** offers competitive rates plus investment options. Investors benefit from a guarantee on their principal investment and from several different investment options that can diversify and add flexibility to their portfolio. GIAs can be an ideal solution for conservative investors looking to help grow their wealth, but who are also concerned about minimizing risk.

<sup>1</sup> All other references to *joint ownership* mean joint ownership with right of survivorship. Joint ownership doesn't apply in Quebec. <sup>2</sup> In Saskatchewan, jointly held property and insurance policies with a named beneficiary are included on the application for probate but don't flow through the estate and aren't subject to probate fees. <sup>3</sup> The rules for equalization or division of assets upon marriage breakdown vary by province. Individuals should consult 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. <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 a trust qualifies as a qualified disability trust (QDT) as defined in subsection 122(3) of the *Income Tax Act* (Canada), it'll benefit from being taxed at the graduated tax rates. <sup>8</sup> If ownership transfers to a spouse and the contract continues.

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