

Estate? What Estate?

You mention to your bank representative concerns about money being available to pay your bills and to provide for your care should you become sick and unable to care for yourself. “No problem” they tell you. Put your accounts in joint names with your children, friend or neighbour.

Next you attend with your investment counselor who warns you about dreaded “probate fees”. To avoid them they say, “put all your assets jointly with a child, friend or neighbour,” then your estate will not need to be probated at all!

They’re right. Because you will have no Estate at all! No longer will you have control over your assets nor will you decide who will benefit from your estate. You have, by doing what they have advised, in effect, destroyed the meaning and intent of your Last Will and Testament. By putting these assets in joint tenants they become the property of the person who you hold them in joint names with. No longer are they yours to dispose of in accordance with your wishes.

The use of such a joint tenancy in order to avoid concerns about freezing your bank accounts or so called “probate fees” and other phantom problems are clearly not the proper or effective way to plan your estate. Not only do you lose control of those assets, but also worse, you may create tax implications that could have been avoided by way of a properly and thoughtfully created estate plan. What you might have left to your loved ones through your estate relatively tax-free may now become the tax-man’s fantasy.

While there is no question that it is often best to hold your assets jointly with your spouse, the holding of assets jointly with anyone else may actually result in circumstances that you never intended. You give up your legal right to decide what will happen to your hard earned assets.

Your estate plan should see you prepare and sign at minimum Powers of Attorney for your Personal Care and Property and a Last Will and Testament. The Power of Attorney for Property would permit the person you name to make decisions affecting your property including such things as paying your bills, depositing money in your bank account, cashing cheques and making repairs to your property. The Power of Attorney for your Personal Care would permit the person that you name to decide very basic things such as the medical health care you receive, what you eat, where you live and even what you wear.

Your Last Will and Testament of course is the legal document by which you control the disposition of your property at death. Each piece of the puzzle must coordinate with the others. Your Powers of Attorney, your Will and the way you own your property cannot conflict.

The point is, you go to you doctor for medical advice and your accountant for tax advice. When it comes to planning your estate, you need to go to your lawyer for legal advice. You work long and hard to acquire your assets. You deserve proper and appropriate advice when it comes to planning what will happen to your estate when you leave this earth. It is still yours, so have it your way!

The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.