

# Legal Perspective Quarterly

**Willingham & Côté, P.C.**  
attorneys & counselors at law

## Jointly Owned Real Estate: *New Planning Options*

Article by Attorney Scott A. Breen



Volume 7, Issue 1

I often have clients who, at their death, would like to pass along a family cottage (or another type of property) to their children. Unfortunately, the transfer of this property often causes an increase in the property taxes to the point where it is no longer feasible for the children to afford to keep the property.

One way to avoid the problem of a significant property tax increase may be to have the parents transfer the property into joint ownership with their children during the parents' lifetime. The Michigan Supreme Court recently issued an opinion that affects the property taxes of jointly owned real estate after it is transferred by deed or after one of the joint tenants dies. This article will explain how this change in the law will allow our clients to decide whether joint ownership is a possibility that would be beneficial.

First, we should explore why property taxes increase upon the transfer of property or death of property owners. This increase stems from a number of state laws. Each year, local assessors provide property owners with a statement showing the "state equalized value (SEV)" and "taxable value" of their real estate. The SEV is equal to one-half of the fair market value, as determined by the assessor. In the year after you acquire real estate, the SEV and taxable value are the same. In determining your property taxes, municipalities multiply the taxable value, not the SEV, of your property by the millage rate. Michigan law limits the yearly increase of the taxable value of real estate (not the SEV) to the rate of inflation or 5 percent, whichever is less. Since the SEV is based on fair market value, the SEV often increases more than the taxable value.

Generally, the longer that real estate is owned, the greater the gap between the SEV and the taxable value. Upon a "transfer of ownership" (as defined by Michigan law), the taxable value is adjusted upward to equal the SEV. This is commonly called "uncapping" of the taxable value. This property transfer and the resulting "uncapping" can greatly increase the amount of property taxes that will be owed.

For example, assume that John and Judy have owned a summer cottage on Lake Michigan for 30 years. In 2011, they pass away and their cottage is transferred, pursuant to their trust, to their children. In 2012, the taxable value of the property will be adjusted upward to equal the SEV. Because the value of the Lake Michigan property has increased significantly over the past 30 years (even though there has been a recent drop in values), the taxes will also greatly increase beginning in 2012.

However, there are some transactions that are not considered a "transfer of ownership" under Michigan Law. Michigan law provides that there will not be a transfer of ownership when there is a transfer that creates or terminates a joint ownership (called a "joint tenancy"). A joint tenancy is a type of property ownership by two or more people where title to the property automatically passes to the surviving owner(s) upon the death of another owner. In order to take advantage of this exception, parents could create a joint tenancy during their lifetime rather than leaving property (such as a cottage) to their children, pursuant to a will or trust.

The new Supreme Court opinion clarifies the joint ten-

ancy exception to the "transfer of ownership" provision of Michigan law. The Court's decision is best described by example. If John, and Judy decide to add their son Junior, as an owner of their cottage, this creates a joint tenancy with Junior. This is not an uncapping event. If John and Judy die, creating a survivorship right to the cottage for Junior, there is also no uncapping event. However, as soon as no uncapping event. However, as soon as Junior conveys the property to another party (e.g., adding his wife Mint on the deed), the uncapping event occurs. This ruling is both positive and negative. It is favorable in the sense that there will be no uncapping upon the death of John and Judy. However, the ruling is not so liberal as to allow Junior to create additional joint tenancies with third parties after John and Judy's death.

Although, at first glance, it may seem like a "no-brainer" to keep the real estate out of trust and create a joint tenancy, planning, however, should be carefully considered. First, once a joint tenancy is created, the child (or other third party) has an immediate interest in the real estate and may try to gain access to, or benefit from, the property. Second, there may be gift tax consequences in connection with the conveyance, which must be reported to the IRS on a gift tax return. Third, if the original owner later decides to sell or transfer the property, this would likely require the consent of all joint tenants. Fourth, there may be little or no tax advantage to creating a joint tenancy, if the state equalized value and taxable value are very close in value. If you would like to discuss your situation in more detail, you may

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**Jointly Owned cont.**

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*If you would like to discuss your situation in more detail, you may contact me at 517-324-1021.*

**Long Term Marriage: Divorce Implications**

Article by Attorney Torree J. Breen

Michigan is a no-fault divorce state which means the court will grant a divorce without a showing of fault-based grounds and even if the non-filing spouse does not want a divorce. The court is required to make an "equitable" division of marital property. Traditionally, each spouse is usually entitled to fifty percent of the assets acquired throughout the marriage. Long term marriages raise various issues with property division since the marriage may have produced pensions, retirement plans, various investment accounts, real estate and long term investments.

The largest asset to a long term marriage is often the marital home. In the current economy the marital home has become an encumbrance to the settlement. Selling the home may lead to financial loss and refinancing has become more difficult with government regulation. One of the spouses most likely will be awarded the house in the judgment of divorce along with

the ongoing expenses associated with the house until the house can be sold.

The division of pensions and retirement accounts require a "qualified domestic relations order" or QDRO. This is an order entered by the court contemporaneously with the judgment of the divorce to divide these types of accounts. A QDRO must be specific to the retirement plan in question since each plan has different rules. If the QDRO does not comply with the plan's requirements, the couple will have to return to court to seek an order that complies with the specific plan's rules.

A divorce settlement of a long term marriage should always address any disparity in income between the spouses due to the specific roles of the

spouses throughout the marriage. Long term alimony may be a consideration since persons divorcing in their fifties may have to consider a divorce settlement meeting their financial needs for the rest of their lives.

It is recommended that you have knowledge of all of the property that has accrued throughout your marriage. It is also important to know all the sources of debt such as credit cards or mortgages since in Michigan each spouse will often be responsible for some of the debt pursuant to a judgment of divorce. Knowledge is always powerful to ensure that the assets of the long term marriage are properly divided at the time of divorce.

*If you would like to discuss your situation in more detail, you may contact me at 517-324-1034.*

**Willingham & Coté extends an invitation to the following events:**

- ◆ A "Wednesday Tea Party" at Walnut Hills County Club on May 23, 2012, from 2:00 p.m. to 4:00 p.m.
- ◆ An "Art Fair Reception" at our office to celebrate the East Lansing Art Fair. Please join us on May 19, 2012, from noon to 3:00 p.m., for beverages and snacks.



**Please RSVP for these events at (517) 324-1048.**

## Firm Success

### Trial Courts

*James Dalton* successfully defended our client against allegations of physician liability in Isabella County Circuit Court.

This cause of action involved allegations of liability based on an underestimation of fetal weight pursuant to an ultrasound during the late term of a pregnancy. The jury determined that our client did not breach the standard of care and issued a "no cause" in favor of our client.

*Ken Letherwood* won an insurance coverage dispute in Wayne County Circuit Court.

The plaintiff alleged he sustained severe injuries to his foot, neck, and shoulders, as a result of falling out of his motor vehicle. It was questionable whether the vehicle caused the plaintiff to fall out of the vehicle, since the plaintiff offered various accounts of how and when the injuries occurred. The Plaintiff demanded \$450,000 in damages. Our client paid \$0.

*Torree Breen* successfully convinced the trial court in Ingham County Circuit Court to reduce the parenting time afforded to the father of our client's minor child.

Previously, the referee issued a temporary order awarding the father custody on a fifty/fifty basis. The trial court reversed the referee's determination, since it determined that the grandparents were actually providing the care to the minor child, not the father. The Court also raised the child support obligation in favor of our client.

### Appellate Courts

*Dawson v Farm Bureau Mutual Ins Co*, Our client was not bound by a decision made by a trial court involving different parties in which our client was not a party to the lawsuit.

*Keusch v Farm Bureau Ins Co*, The claimant's cause of death was speculative, since it could have been caused by pain medications, illegal substances and/or a combination of both substances; therefore, automobile no-fault benefits were not available to cover claims arising from the claimant's death.

*Marcoux v Home-Owners Ins Co*, There is no coverage for Michigan automobile no-fault benefits for an accident involving a snowmobile with a parked car, because the car involved was not unreasonably parked at the time of the accident. The occupant of the snowmobile had time to observe the vehicle, react to the vehicle and avoid the collision, thus, the vehicle was reasonably parked at the time of the accident.

*Nolan v Auto-Owners Ins Co*, There is no coverage available for claims made by a landlord for damage sustained for a rental unit by the tenant's pets, because there was a contract exclusion prohibiting recovery based on damage from pets.

*Kibbey, et al. v Auto-Owners Ins Co*, Coverage was not afforded to property damage caused by improper construction of a home and water/ice pressure caused by the lake near the home.



Attorneys Anthony Kogut and John Yeager

The Michigan Lawyer's Weekly has identified five cases successfully handled by Willingham & Coté, P.C., as the "Most Important Opinions" from 2011

*Simply*WILLS  
by Willingham & Coté, P.C.

The Estate Planning attorneys at Willingham & Cote' P.C. are pleased to announce a new service offering: "**Simply Wills.**" Over 80 percent of families\* do not have adequate estate planning documentation. This product allows you to inexpensively generate a durable power of attorney, a medical power of attorney and a simple will. In addition, clients will have up to one hour of time with a licensed Michigan attorney to ask questions, review and sign these documents. The fee for this service is \$297.

\*AP Poll June 15, 2011

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## Announcements

Willingham & Coté welcomes new attorneys:



**Howard E. Goldberg**

### *Howard E. Goldberg*

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Howard E. Goldberg is associated with the firm of Willingham & Coté, P.C., as of counsel. His practice specialty includes administrative law, state tax law and alcohol beverage law. Before joining Willingham & Coté, P.C., Mr. Goldberg held various positions on the staff of the Michigan Attorney General. While with the Attorney General's office, he specialized in the areas of alcohol beverage regulation, civil rights and tax. Mr. Goldberg acted as First Assistant Attorney General for Alcohol Enforcement and served as counsel to the Michigan Liquor Commission.



**Troy D. Clarke**

### *Troy D. Clarke*

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Troy D. Clarke is a member of the firm's Litigation Group. His practice specialties include the areas of insurance coverage defense, no-fault defense and criminal defense. Mr. Clarke is admitted to practice in Michigan's state and federal courts. He has represented clients in all phases of litigation, including at trial and in the appellate courts. Mr. Clarke earned his bachelor of science degree from the University of Houston and his law degree from Thomas M. Cooley Law School. He is a past board member of Habitat for Humanity.



**Tara L. Bachner**

### *Tara L. Bachner*

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Tara L. Bachner is practicing in the areas of estate planning and probate. She graduated cum laude from Thomas M. Cooley Law School and has been admitted to practice law in Michigan. Mrs. Bachner is a member of the Greater Lansing Estate Planning Council, Ingham County Bar Association, Young Lawyers Section of the State Bar of Michigan and the Probate & Estate Planning Section of the State Bar of Michigan.