

NEWS

Joint bank accounts – who gets the money?



Charles Wagner

TORONTO – As a general rule when people own assets or property on joint account or joint tenancy there is a right of survivorship. So for example, if Frank and Peter have a joint bank account and Frank dies, then Peter is entitled to all that money by right of survivorship. Two recent Supreme Court of Canada decisions have underscored the need to carefully document a person's intentions with respect to jointly held assets.



Les Kotzer (left) and Barry Fish

As a result of these recent decisions two lawyers, Barry Fish and Les Kotzer, created a Joint Asset Planning Kit, which purports to "...eliminate any ambiguities involving joint accounts." These are the same two lawyers who authored the book *The Family War – Winning The Inheritance Battle*, which describes legal battles that happen to families squabbling over inheritances. Information about the Joint Asset Planning Kit can be found at www.jointasset.com.

If everyone used this kit would it resolve all estate disputes regarding assets held in Joint Tenancy?

Jordan Atin, an estate litigator with Hull & Hull LLP, chair of the Ontario Bar Association Estates Section, and a member of the B'nai Brith Estates and Trusts Group – Lawyers Division, reviewed the kit.

Atin said, "The kit may end disputes over joint assets, but, sadly, there are always other things for siblings to fight over."

Kotzer said, "Court cases often occur when siblings discover that one child was made a joint account holder by a parent. When the parent dies, the child, as the remaining joint tenant, claims the money by right of survivorship. When there is enough evidence for the court to clearly show what the parent wanted to occur with the money in the joint account, the judge's decision is easy. It gets complicated when the evidence is not so clear. Historically, there have been two presumptions upon which the courts relied in these circumstances."

A presumption is a theory used as a starting point to analyze the evidence. It is up to the litigant who disagrees with the presumption to provide enough evidence to disprove it. Some courts relied on the Presumption of Advancement, which is based on the idea that people give gifts to their children. So if Dad put money into a joint account with his son Fred, then the court presumes that Dad intended Fred to keep the money after Dad died. Other courts relied on the Presumption of Resulting Trust, which stems from the idea that people make bargains – they do not give things away for free. These judges ruled that if Dad put money into a joint account with his son Fred, then Dad really intended for Fred to hold that money in trust for Dad's estate.

In Pecore v. Pecore and Madsen Estate v. Saylor the Supreme Court of Canada clarified the law. The court explained that the intention of the deceased is the determining factor – Presumptions are only guides. The court also explained that the Presumption of Advancement only applies to minor children because this presumption was based on the idea that minor children needed support from their parents. Accordingly, adult children who normally do not need support cannot rely on the Presumption of Advancement. The Supreme Court adopted Justice Heeney's view in the McLeer case and stated, "It is common nowadays for aging parents to transfer their assets into joint accounts with their adult children in order to have that child assist them in managing their financial affairs. There should, therefore, be a rebuttable presumption that the adult child is holding the property in trust for the aging parent to facilitate the free and efficient management of that parent's affairs."

One thing is very clear: Ambiguity and failure to definitively document the testator's intention opens the door to estate litigation.

Nothing can replace careful documentation of the deceased's intention by the lawyer assisting in the client's financial planning.

We live in a very litigious world where people of good faith often disagree. Too often the disputes cannot be resolved and end up in court. This is especially so when family members are at odds with one another and receive mixed signals from parents about their intentions regarding the estate. Despite the temptation to jump to conclusions, it would be a mistake to substitute this review of the topic for substantive legal advice.

For those considering this option, there is no replacement for a competent solicitor's own research, analysis and judgment.

Charles B. Wagner practises Estate Litigation in Toronto. For further information about the issues raised above, you can access http://www.cbwagnerlaw.com/a_joint_tenancy.htm or contact the lawyer at cbwagner@cbwagnerlaw.com or call 416-366-6743.



HALTON-PEEL LODGE: Pearl Gladman (fourth from left), director of the Centre for Community Action, visits Halton-Peel Lodge and updates membership on current B'nai Brith Canada activities and agenda. Pictured (from the left) are the new executive: Joyce Aster, Halton-Peel Regional Director; Anne Bobker, Moira Black, Gladman, Ronaldo Klein and Meri Klein.

USCJ joins Nefesh B'Nefesh in promoting Aliyah

JERUSALEM – Nefesh B'Nefesh will launch the *Letters from Home* campaign during the High Holidays to promote Aliyah among North America's Conservative Jews. The campaign, which was produced in cooperation with the United Synagogue of Conservative Judaism (USCJ), features portraits and inspiring essays from former members of United Synagogue communities in North America who made Aliyah. The material will be distributed to more than 700 United Synagogue-affiliated synagogues, reaching hundreds of thousands of Conservative Jews throughout the United States and Canada.

"The United Synagogue of Conservative Judaism and Mercaz are proud of the growing number of Conservative Jews who seek an enriched life in Israel," said Rabbi Jerome Epstein, United Synagogue's executive vice president. "Nefesh B'Nefesh is in a unique position to help Conservative Jews who wish to consider the option of Aliyah, and that is why the United Synagogue of Conservative Judaism and Mercaz have joined to endorse this important resource."

Nefesh B'Nefesh has distributed approximately 50,000 copies of the pamphlet and poster for the *Letters from Home* campaign to Conservative synagogues.

"This campaign is very exciting because it provides an opportunity for the hundreds of Conservative Jews who have been making Aliyah with Nefesh B'Nefesh over the years to convey to their fellow community members back home what Aliyah has meant to them," said Rabbi Yehoshua Fass, Nefesh B'Nefesh's co-founder and executive director.

Te-Amim Music Theatre

The producer of the acclaimed drama "The Secret of Gabi's Dresser" is proud to present the Canadian premiere of:



AL GREEN THEATRE
at the Miles Nadal JCC
750 Spadina Avenue

BOX OFFICE
www.totix.ca or
call 1-888-222-6608

FOR SCHOOL MATINEES
(NOV 8 - 16)
VISIT www.te-amim.com

Preview: Nov 8, 1:00PM - \$15 adult, \$10 youth
Premiere: Nov 10, 7:30PM - \$25 adult, \$20 youth

Nov 15, 7:00PM - \$16 general admission
Nov 17, 7:30PM - \$20 general admission

Major Educational & Outreach Sponsor



Eva and Peter Friedmann

Sponsors



Joseph Gottdenker and Family

Venue Partner



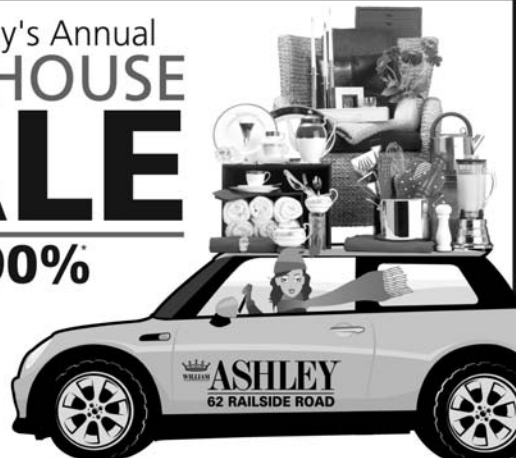
Gerry Schwartz

CHINA • CRYSTAL • SILVER • GIFTS

William Ashley's Annual
WAREHOUSE SALE

SAVE up to **90%**

SALE IS HAPPENING NOW!



The Biggest. The Best. The Original.

AMAZING SAVINGS

Wedgwood • Royal Doulton
Waterford • Gorham • Splendide
Denby • Royal Worcester • R.C.D.
Wüsthof Trident • Spode • Evesham
Atlantis • Aynsley • Yamazaki
Cuisinart • Degrenne • Orrefors
Mikasa • Stuart • Noritake • Dansk
Villeroy & Boch • Wallace • Lenox

SAVE up to **90%**

Over 40,000 Sq. Feet of Incredible Savings
Dinnerware Sets • Crystal Stemware • Children's Gifts • Kitchen Gadgets
Stainless & Silver Flatware • Bath & Spa • Housewares • Frames • Gardening
Executive Gifts • Discontinued/Clearance China & Crystal • Home Décor

SALE HOURS:

Monday – Friday 9 am – 9 pm Closed Tuesdays
Saturday & Sunday 10 am – 6 pm Restocked Daily



62 Railside Rd, Toronto • 416-515-7253
www.williamashley.com/warehousesale

*Save up to 90% off Ntl. Sugg. Reg. Prices or Comparable Value. Personal shopping only. Cash, Visa, Mastercard, Amex, Interac. We reserve the right to limit quantities. No Cheques or Credit Notes Accepted. Not all items illustrated are available. All sales are final. For safety reasons, strollers and car seats cannot be accommodated. E. & O. E.

948 Eglinton Ave. W.
Toronto, ON
T: 416.784.0128
www.marronbistro.com

62 Railside Road, Toronto
HWY. 401
LAWRENCE AVE. EAST
#62
RAILSIDE RD.
RAILSIDE RD.
VICTORIA PARK
EGLINTON AVE. EAST

2 Blocks East of Don Valley Pkwy,
South off Lawrence Ave. East