

Family Transfers of Property in Manitoba: Common Scenarios and Legal Considerations

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Transferring property among family members is a common occurrence in Manitoba. While such transfers may seem straightforward, they carry important legal considerations.

Below are three of the most common types of intra-family property transfers and the legal issues that often arise in each scenario.

1. Adding a Parent to Title for Mortgage or Financing Purposes

It is not uncommon for adult children to add a parent to the title of a property in order to strengthen a mortgage application where the child does not qualify for financing on their own. When parents go onto a mortgage with their child, the lender often also requires that they must also be added to the title to the property.

In many cases, the long-term plan is for the child to eventually refinance the mortgage in their own name and remove the parent from both the mortgage and the title. However, if the parent is registered as a 50% or joint owner, the child may be required to pay part of the land transfer tax again when the title is transferred back into their name alone.

To mitigate this, it is common practice to register the parent on title as a 1% tenant in common. This approach preserves the parent's eligibility for mortgage qualification purposes while minimizing future land transfer tax liability. When the title is eventually transferred to the child, land transfer tax would only apply to the 1% of the land transfer tax payable.

2. Adding a Spouse or Child to Title

Another common scenario involves parents adding a child or spouses adding each other to title, typically for estate planning purposes. This is often done to facilitate the smooth transfer of property upon death, potentially avoiding probate. In Manitoba, joint ownership comes with the “right of survivorship” which allows property to pass automatically to the surviving owner, without the need to obtain a grant of probate prior to transferring the land.

It is important to note that while spouses do not pay land transfer tax when adding each other onto title to their residential property, a transfer of non-residential property or a transfer to their children will result in land transfer tax payable on the percentage interest of the land that is transferred.

Finally, in marital or common-law relationships, transferring title may also engage family property laws, which could affect how the property is divided in the event of separation or divorce. For this reason, it is important to consult with a lawyer who specializes in family law, prior to completing a transfer amongst spouses.

3. Gifting an Interest in Property to a Family Member

Gifting all or part of an interest in property to a family member is a significant legal act. While no money may change hands, the transfer is still considered a "disposition" for tax purposes, and the property will be deemed to have been disposed of at fair market value (FMV), even if the recipient paid nothing. This can trigger a capital gain for the person transferring the property, depending on the difference between the FMV and the original purchase price (or adjusted cost base).

It is crucial that FMV is determined properly, ideally through a formal appraisal, to ensure accurate tax reporting. Failing to account for the capital gains tax liability can result in unexpected and sometimes significant tax consequences.

The Importance of Tax and Legal Advice

Before proceeding with any property transfer - even one that seems routine - it is strongly recommended that individuals consult both a lawyer and a qualified tax professional. The legal form of the transfer may not always match its tax treatment, and simple misunderstandings can lead to costly outcomes.

A tax professional can help estimate any tax consequences arising from the transfer and advise on strategies to mitigate them, such as the principal residence exemption or capital gains planning.

Transferring property among family members is not merely a private arrangement. It is a legal transaction with real and lasting consequences. Whether for financing, estate planning, or gifting, each type of transfer should be approached with care and awareness of the potential legal and tax implications. Ensuring that all parties understand their rights and obligations at the outset can help avoid certain legal repercussions for years to come.

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