

Management of Jointly Held Assets

When you are appointed as a committee of estate, you are required to manage the financial affairs in the best interests of the adult who has been declared incapable. You are generally not permitted to establish joint bank accounts or purchase property in joint tenancy on behalf of the adult. However, it may be appropriate for you to retain jointly owned assets acquired by the adult while the adult was still capable. This fact sheet provides guidance on how to manage these assets and how to report them to the Public Guardian and Trustee (PGT).

What is Joint Ownership?

Joint ownership is where two or more people own an asset (for example, a bank account, real property or a vehicle). There are two kinds of joint ownership in British Columbia:

- 1. Joint tenancy:** The joint owners hold an equal, undivided interest in the asset. When one owner dies, the title passes outside the deceased's estate to the survivor(s) by "right of survivorship";
- 2. Tenancy in common:** Each owner has a separate interest in the asset which may be equal or unequal. When one owner dies, that owner's share forms part of their estate and does not pass to the surviving owner(s).

However, sometimes joint ownership is more complicated than this. The person who is named as the joint owner of the asset may actually be holding it for somebody else (the "beneficial owner"). This depends on the intention of the original owner when the joint ownership was established. For example, an adult may add one of their children as a joint owner of an investment with the intention that the child not benefit from the investment. In this case, during the adult's lifetime the child is a joint owner "in name only" and the only "true owner" is the adult.

While both types of joint asset can be challenging to manage, the focus of this fact sheet is on assets held in joint tenancy due to the implications for inheritance of the asset and the adult's estate.

Managing Assets Held in Joint Tenancy

Once you become aware the adult owns an asset in joint tenancy, you need to determine how to manage the asset as committee. To the extent reasonably possible, you must consider:

- the reason(s) the asset is held in joint tenancy;
- how the asset was managed and used while the adult was capable;

- who contributed financially to the asset; and
- the perspective(s) of the other joint owners.

The three most common reasons for assets to be held in joint tenancy, and the management and reporting requirements, are discussed below. In every case, it is assumed that the joint ownership was established by the adult while capable, and not subject to duress or undue influence. If this is not the case, it may be necessary for you to challenge the joint ownership and have the ownership of the asset returned to the sole name of the adult.

1. Ease of administration

The adult may have added others as joint owners of an asset only to allow the joint owners to assist in the management of the asset for the adult. The adult did not intend that the asset would pass to the surviving owners on the adult's death.

- **Beneficial Interest:** The PGT considers the adult to be the beneficial owner of 100% of the asset.
- **Management:** Now that you have been appointed committee, joint ownership is no longer needed for ease of administration of the asset and the adult should return to being the sole owner of the asset. If the asset is owned jointly with someone other than you, this may require the other person's consent or a court order.
- **Reporting:** The ownership of the asset should be changed back to the adult as soon as possible. If this has not been done by the time your first committee accounts to the PGT are due, disclose the title in its current state, but report 100% of the value of the asset and 100% of its income as belonging to the adult. Include an explanation of when the joint owner's name will be removed.

2. Shared ownership and use

All owners contributed to and used the asset in the past.

- **Beneficial Interest:** The PGT considers the adult's beneficial interest to be as shown on the title. For example, if there are four joint owners, the adult has one quarter ownership. If any of the joint owners (including the adult) dies, their share is divided among the shares of the remaining owners.
- **Management:** The asset may be managed in the same way as it was managed while the adult was capable, unless this is no longer in the adult's best interest. In that case, discuss alternate options with the joint owner and a PGT Committee Review Officer.
- **Reporting:** When submitting your committee accounts to the PGT, report the value of the asset and its income in proportion to the adult's beneficial interest.

3. Estate planning

The adult may have added a joint owner to an asset they owned with the intention that the asset will transfer to the joint owner upon the adult's death, but not intending that anyone other than the adult would benefit from the asset during the adult's life.

- **Beneficial Interest:** The PGT considers the adult to be the beneficial owner of 100% of the asset, but will usually allow the joint ownership to continue as it was created as part of an estate plan.
- **Management:** You should review the history of the management of the asset and determine if it is appropriate to continue to manage the asset in the same way it was managed while the adult was capable. If the adult's circumstances change and the current management is no longer in the adult's interests or the joint ownership puts the asset at risk, discuss alternate options with the joint owners and a PGT Committee Review Officer.

- **Reporting:** When submitting your committee accounts to the PGT, report 100% of the value of the asset and 100% of its income as belonging to the adult.

Other Considerations

- Whether a joint asset is registered as joint tenancy or tenancy in common, you must ensure it is being appropriately managed in the adult's best interests.
- It is important to communicate and coordinate with the joint owners:
 - how income earned will be divided and reported for income tax purposes;
 - how expenses related to the asset will be paid, including property and casualty insurance; and
 - future plans for the asset, in particular if it should be sold or managed differently.
- You may be required to report on all activity in a joint account to the PGT, including the related income and expenses of the joint owner(s). (For this reason, the joint owner(s) may decide to use a different account to deposit their own income and pay their own expenses.)
- Where jointly owned real property is sold, the proceeds may be retained as a jointly owned asset or be divided among the joint owners. For more information, please refer to the PGT's **Sale of Real Property fact sheet**.
- If you sell or transfer a joint asset that is the subject of a specific gift in the adult's will, you should retain documentation showing the amount of proceeds received (if sold) or the fair market value (if transferred), to allow the adult's executor to comply with section 48 of the *Wills, Estates and Succession Act* after the adult's death.
- When submitting your committee accounts to the PGT, the account review fee payable and any committee remuneration approved is calculated based on the PGT's assessment of the adult's beneficial interest in the joint asset(s), as described above.
- A committee may not revise the adult's estate plan except to provide for the adult's personal and financial needs. Any change to the registration of a jointly owned asset may impact the adult's estate plan and should first be discussed with a Committee Review Officer.
- To have a change in ownership approved, you may have to make an application to court under section 28 of the Patients Property Act. The PGT must be served with notice of any such application, and will review and comment on it.

Contact the Public Guardian and Trustee

Private Committee Services

700–808 West Hastings Street
Vancouver, BC V6C 3L3

PHONE **604 660 1500**
FAX **604 660 4456**
EMAIL **PCAdmin@trustee.bc.ca**

Toll free calling

Toll free calling is available through Service BC. After dialling the appropriate number for your area (see below) request to be transferred to the Public Guardian and Trustee.

VANCOUVER	604 660 2421
VICTORIA	250 387 6121
OTHER AREAS IN BC	1 800 663 7867
EMAIL	mail@trustee.bc.ca
WEBSITE	www.trustee.bc.ca

PGT Hours of operation Monday to Friday 8:30am to 4:30pm

More Information:

This fact sheet is intended as general advice and direction, to help you work effectively and successfully with the PGT. It is not legal advice about your specific situation. If you have questions, please contact the PGT's Private Committee Services department and ask to speak with a Committee Review Officer. You will also find more information in the Private Committee Services pages of the PGT's website, found at www.trustee.bc.ca.