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Personal Real Estate Tips and Traps – Taxes and Ownership Issues

Review these questions and if you have "yes" answers, see the following information for further actions that may be required, some of which will avoid penalties and others to save you taxes.

Seek individual professional advice, where necessary, because the rules are complex and changing frequently. I accept no liability based on reliance of the information below because of too many personal and/or other limiting factors affecting your personal situation. ***You should seek professional advice from your own legal and financial professional advisors before relying or taking action on any of these issues because CRA interpretations or legislation may have changed, or my interpretations may differ from those of your own trusted advisors.***

Prepared August 2026 by Blair Corkum, Bcomm., CPA, CA. R.F.P., CFP®, CFDS-AA, CLU, CHS

#	**Question and Further Actions that may be required**	Yes √	No √	Un-sure or n/a
1	**Do you have a home held in your name on behalf of a child because they were unable to obtain financing (or for other reasons), and do you consider this property as really belonging to them instead of you?**			
	If a Yes Answer: For 2026 and later years, there are new trust reporting rules that apply where property is legally owned by one person but this title is in name only. This particular individual, or individuals, are there for special reasons, but no one considers the legal owner to be beneficially interested in the property, personally or financially. Those individuals are holding the legal title "in trust" for the "beneficial" or real owner. If you answered "yes" to this question, then you are holding title to the property in trust for your child. They have the beneficial ownership, but you have legal title as a trustee. In most cases, a trust arrangement would require the trustee to file a T3 Trust Income Tax and Information Return each year, starting with the calendar year 2026. In this particular case, however, an exception should apply, so no T3 Return would be required. Under ITA 150(1.31)(b), subsection 150(1.3) does not apply where the legal owners are related individuals and the property would be the principal residence of one or more of the legal owners for the year if they had designated it under the definition of principal residence in section 54. You are the legal owner, and under that definition a housing unit ordinarily inhabited by a child of the taxpayer can be the taxpayer's principal residence. This home could therefore be designated by you, which is what the exception tests. The			

	test is hypothetical, so no designation actually has to be filed and you give up no exemption on your own home. The Explanatory Notes to this provision give the very example of a parent being on title to allow a child to obtain a mortgage. Note also that ITA 150(1.32) treats a person as related to himself or herself for these purposes, so the exception is not lost merely because you are the only person on title. The result is the same where the child is also on title, as discussed in Question 2(iii) below. Ensure you have documentation stating that you are holding this property on the behalf of your child, meaning that they are the "beneficial owner". The beneficial owner is the person who will report any future property transactions for income tax purposes. If the person (your child) living in the home is the beneficial owner, they may be entitled to the principal residence exemption to avoid income taxes upon disposition of the house. As explained above, the CRA will consider this arrangement to be a trust, but no T3 Return will be required because of the exception discussed above. Whether a return is required is a trust reporting question only. It is separate from the principal residence exemption, which is decided under different rules, and one does not depend on the other.			
2	**Is the home in which you live held jointly with your child(ren)?**			
2(i)	**If Yes, is it everyone's understanding that:** **(a) The home is <u>owned equally</u> by all of you with sharing of all legal responsibilities and for all purposes?**			
	If a Yes Answer: At the time the property was transferred to joint name, it should have been reported on your personal income tax return. If you did not report it, especially if the transfer occurred in 2016 or later, it is important to file retroactive amendments in order to take advantage of the principal residence exemption and/or to report unpaid taxes. To claim the exemption, CRA may assess a late filing penalty for form T2091 (or T1255 for a deceased person) of the lesser of $8,000 and $100 for each complete month the designation is late. It is possible that these penalties may not be assessed if you voluntarily come forward. You may wish to use the Voluntary Disclosure process to ensure penalties are not assessed, but professional advice is strongly suggested. If penalties are assessed, you may be successful in having them waived under the Taxpayer Relief provisions. However, you may still wish to consider the cost of the penalty versus the income tax savings to be obtained to determine whether you want to claim the exemption. *Regardless, for taxation years ending after October 2, 2016, ITA 152(4)(b.3) allows CRA to reassess an unreported disposition of real estate at any time, with no expiry, although the reassessment is confined to amounts relating to that disposition. Once you file the form amending the return, CRA then has three years from that filing and the year closes. It is important to take corrective action on your own to avoid or reduce penalties for not reporting taxable income. For changes related to the principal residence filing requirements, see this CRA web site -* https://www.canada.ca/en/revenue-agency/programs/about-canada-			

	revenue-agency-cra/federal-government-budgets/budget-2016-growing-middle-class/reporting-sale-your-principal-residence-individuals.html. *In addition, if the home is not held jointly by all of your children, and you do not have clear documentation that you only want the children who are on the property title to receive it upon your death, there may be legal questions regarding who is entitled to the property on your death. This is based on the Supreme Court case of Pecore vs. Pecore (2007 SCC 17 (CanLII), [2007] 1 SCR 795). Adult children are presumed to hold joint property in trust for their parents unless there is evidence to the contrary. See the case summary here - https://canliiconnects.org/en/summaries/33319#:~:text=The%20court%27s%20decision%20surrounded%20the,that%20a%20gift%20was%20intended You should obtain legal advice from your lawyer, and prepare documentation setting out who are the intended to be the "real" owners of the property.*			
2(ii)	**(b) Or, if Yes, do you consider that you still own 100% of the home and the purpose of joint ownership is only to make the transfer to your other joint owners easier upon your death?**			
	If a Yes Answer: In this situation, the joint owners are likely holding a portion of the property "in trust" for you until your death. Consequently, it is likely that the property will still need to be listed as your asset upon death, and be subject to distribution according to your Will (and subject to probate fees). Discuss this with your lawyer. Also, see the answer to Question 1 above for further information about the possible requirement for filing trust tax returns.			
2(iii)	**(c) Or, if Yes, do you consider that your child owns 100% of the home, that the purpose of joint ownership was to assist them in acquiring the property, and that they have full control and responsibility for all decisions and costs related to the property?**			
	If a Yes Answer: In this situation you are on title in name only. Your child is the beneficial owner and you hold your legal interest "in trust" for them. For the trust reporting rules this is a bare trust, each legal owner is treated as a trustee, and your child is the beneficiary. *Because you never held a beneficial interest, no disposition occurred when you went on title, and none occurs when you come off title later. Nothing is reported on your own tax return at either point. Your child reports any future sale, and any rental or other income in the meantime.* *Whether a T3 Return is required depends on whether the home qualifies as a principal residence.* *If the property qualifies as a principal residence, no T3 Return is required. The exception applies where all of the legal owners are related individuals and the property would be the principal residence of one or more of the legal owners. Your child is a legal owner, lives there, and can designate the property, so the test is met. Remember that a principal residence normally*			

	includes no more than 1.24 acres of land. *Who counts as related? For most income tax purposes, spouses, parents, children and grandchildren are related, and in-laws are included. Aunts, uncles, nieces and nephews, and spouses of in-laws such as the spouse of your brother-in-law, are not related. For the trust reporting rules specifically, however, ITA 150(1.32) widens this: an aunt, uncle, niece and nephew are treated as related persons, and a person is related to himself or herself. That last point matters where one person is both a legal owner and the beneficial owner.* *If the property does not qualify as a principal residence, for example because the land exceeds the allowable acreage or because nobody ordinarily lives there, the exception fails and a T3 Return is required. The only remaining relief would be one of the small value exceptions: total assets under $50,000 throughout the year, or personal-use property under $250,000 throughout the year where every trustee is an individual and every beneficiary is an individual related to each trustee.* *In either case, put the arrangement in writing at the time, signed by everyone involved, recording that your child is the beneficial owner and that you are on title only to assist with financing. Without that record, the Pecore presumption discussed above can work against your child and the arrangement can be misread as a gift to you.*			
3	**Do you live in your own home, but <u>you have transferred all ownership to your children</u> while keeping a "life interest" for yourself? A life interest is a guarantee that you can live there as long as you wish.**			
	If a Yes Answer: At the time the property was transferred to joint name, it should have been reported on your personal income tax return. If the transfer occurred in 2016 or later, it is important to file retroactive amendments in order to take advantage of the principal residence exemption and/or to report unpaid taxes. Note that the principal residence normally only includes 1.24 acres of land. Also, see the answer to Question 2(i) above for further information. *A properly structured life interest does not create a trust, so no T3 return arises from it. The life interest and the remainder interest are two separate interests in the property, and each is owned outright, both legally and beneficially, by one party. Nobody holds anything for anybody. Where the arrangement is informal, however, and in substance you kept control and paid all of the costs, the children may hold nothing more than bare legal title. There may then be a bare trust with its own reporting obligation, and the transfer may not have achieved the probate saving you were seeking. For the years after you transfer your home to the children, it will no longer be defined as a principal residence for you as you no longer own the home. Assuming no children are living in the home, any increase in value of the home from the time of title change until it is sold will be subject to capital gains taxes. Furthermore, if the property is sold prior to your death, the capital gains taxes will likely be higher than if the property is sold after*			

	your death because there is a value to the life interest that will not be transferred to the children. See the article on my website discussing life interests https://www.corkumfinancial.ca/life-interests-and-the-family-home-probate-vs-taxes/.			
4	**Have you gifted, sold or transferred any real estate to another person, including to joint name, in 2016 or later (whether it was your principal residence or other property)?**			
	If a Yes Answer: For any transfers in 2016 or later, it is important to file retroactive amendments in order to take advantage of the principal residence exemption and/or to report unpaid taxes. CRA can reassess you for any unreported real estate transactions back to and including 2016, and unless you filed the election to claim the principal residence exemption, the transfer of your home will be taxable as a capital gain. See further discussion in the answer to Question 2(i) above. See the CRA explanation of reporting transfers of real estate at this site: https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains/completing-schedule-3/real-estate-depreciable-property-other-properties/real-estate.html Any sales or gifts of property, whether during lifetime or death, to anyone other than a spouse is treated as a deemed sale at fair market value, and required taxes must be paid. See the CRA web site here - https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-12700-capital-gains/transfers-capital-property/other-transfers-property.html There are penalties and interest that may apply, and seeking professional advice promptly is important.			
5	**Are you purchasing property in Canada from a non-resident of Canada?**			
	If a Yes Answer: Before closing, you need to obtain a section 116 clearance certificate from the seller, or withhold part of the purchase price and remit it to the Canada Revenue Agency. The withholding is generally 25% of the purchase price, and can be higher for certain types of property such as rental buildings. *This matters a great deal, because if you do neither, you can be held personally liable for the seller's Canadian income tax on the sale. The liability rests with you as the purchaser, and once the sale proceeds have left the country, there is usually no practical way to recover the money from the seller.* *Residency for tax purposes is not the same as citizenship, and a seller may be a non-resident without either of you giving it any thought. Make reasonable inquiry about the seller's residency, have the question dealt with in the agreement of purchase and sale, and have your lawyer hold back sufficient funds in trust until the clearance certificate is produced. Speak to your lawyer and a tax advisor well before the closing date, because the*			

	certificate takes time to obtain.			
6	**Do you own land that was farmed in the past by your parents, grandparents or great grandparents, even if it is no longer farmed?** (Note: Land rental to a farmer is rental property, not farm property, and not farming income.)			
	If a Yes Answer: You may be able to claim a farming capital gains deduction of up to $1,275,000 of gains ($637,500 of taxable capital gains) based on 2026 rates (sometimes called an exemption) if one of the following two scenarios applies in respect of the property. Scenario 1 applies if the property has been owned by the taxpayer for at least 24 months before disposal. Scenario 2 applies if the property is still owned from a time before June 18, 1987. A child includes a grandchild, great grandchild and maybe a foster child, son-in-law, or daughter-in-law. Also see below re: in-laws. [Income Tax Act ss. 252(2), 110.6(1) and 70(10)]: ***Scenario 1*** *[See Income Tax Act 110.6(1.3)(a)]* *A property owned at the time of sale will be considered to be carried on in farming if* *(i) the property was owned for at least 24 months before the date of sale by either a parent or child, [ITA 110.6(1.3)(a)(i)],* ***and*** *(ii) in at least two years while the property was owned by either parent or child, the gross farming revenue by the operator exceeded their income from all other sources,[ITA 110.6(1.3)(a)(ii)(A)(I)]* ***and*** *(iii) the property was used more than 50% in the farming business where either the parent or child were actively engaged on a regular and continuous basis.[ITA 110.6(1.3)(a)(ii)(A)(II)]* *Therefore, regardless of which person owned the property, as long as these tests can be met by any one of them, the property will likely be qualified farm property. [CRA Technical Interpretation 2023-0963801C6]* *Similar rules relate to partnerships and corporation shareholders, as well as to individuals involved in fishing. [ITA 110.6(1.3)(a)(ii)(B)]* ***Scenario 2*** *[See Income Tax Act 110.6(1.3)(c]* *A property owned at the time of sale will be considered to be carried on in farming* *(i) if the property was acquired by the child (grandchild or great grandchild) before June 18, 1987 and* *(ii) in the year of disposal by the child, the property was used more than 50% in the course of carrying on the business of farming in Canada by the parent or child [ITA 110.6(1.3)(c)(i)]* ***or, if not, then*** *(iii) in at least five years during which the property was owned by either the parent or the child, the property was used more than 50% in the course of carrying on the business of farming in Canada by parent or child. [ITA 110.6(1.3)(c)(ii)]* *In plain language, this last clause means you will be eligible for the deduction if you acquired the property before June 18, 1987, if your parents or grandparents farmed more than 50% of the land for at least 5 years during*			

	their ownership, even if you did not farm the property yourself. This 50% is measured by the deed, and applies even if the land is no longer clear (e.g., it is now overgrown). The property must have been used in a farming <u>business</u>, but unlike Scenario 1, the gross farming revenue does not need to exceed income from all other sources. ***What about in-laws?*** *Note that a son or daughter-in-law qualifies as a child only while the parent is alive, and before the breakdown of any marriage or common-law relationship. The CRA states in their interpretation #2008-0285271C6 "that where there is a breakdown of a relationship following a divorce or death, an individual will cease to be connected by marriage or connected by blood relationship to the parents of their former's spouse." Although the in-law will no longer be a child after that time, CRA states that the farming gross revenue test can still be met based on the test being conducted for the period when the family relationship still existed, and if met, then the in-law would a child during this time and can also qualify to claim the exemption after separation as long as the ownership tests are also met.* *It should be obvious that professional tax advice is essential in these situations.*			
7	**Are you planning to sell personal land holdings?**			
7(i)	**(a) If a Yes Answer: Have you ever subdivided that property?**			
	If a Yes Answer: You will likely need to charge GST/HST unless *a) the land has been subdivided into no more than two parts <u>at any time during ownership</u> by that individual. Subdividing your original property into two parts will not, by itself, trigger GST/HST on a sale. Once the parcel has been subdivided into more than two parts, however, the exemption is lost for parts of that parcel generally, not only for the third and later lots, so the other parts can be caught as well, whether or not they have already been sold.* *b) If the land has been subdivided into more than two parts, a part sold to a related individual, or to a former spouse or common-law partner, may still be exempt where that person acquires it for their own personal use and enjoyment.* *Obtain professional tax advice. Refer to CRA GST/HST Memorandum 19.5 Land and Associated Real Property here: <u>https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/19-5/land-associated-real-property.html</u>*			
7(ii)	**If a Yes Answer for planning to sell the property: Have you earned income from the property, such as rental of land to a farmer or rental of buildings for storage?**			
	If a Yes Answer: You may need to charge GST or HST on your selling price, even if the land was not subdivided. Based on interpretations by the GST side of the Canada Revenue Agency, a review of the facts is necessary, and the following comments are based on one of their interpretations. *a) Did you operate a "business"? CRA says, "for GST/HST purposes, a business is defined to include an undertaking of any kind whatever, whether the undertaking is engaged in for profit. It is further defined as any activity*			

	engaged in on a regular or continuous basis that involves the supply of property by way of lease, license or similar arrangement." *b) Is the property used primarily [usually meaning more than 50%] for business, which "is a question of fact and is generally not based upon a single factor, but rather upon a weighing of all factors." [See Appendix A to GST/HST Memorandum 19.5, Land and Associated Real Property] "If there is no evidence of personal use, this would suggest business use and conversely, if there is no evidence of business use, this would suggest personal use. For example, an individual owns real property, which they use for their own personal use and enjoyment and they supply portions of it by way of lease. Where the individual's personal-use time spent on the real property is limited, and much of their time and energy (for example, upkeep and maintenance of the property), with respect to the property can be attributed towards its rental activities, the real property is generally viewed as used primarily in a business."* *c) "Where there is sufficient evidence to indicate capital real property was used primarily in a business, the question then arises if there is a reasonable expectation of profit. The CRA interpretation for GST is that, generally, when a person's gross income generated from the lease(s) of real property is greater than the expenses attributed thereto, this suggests that the business had a reasonable expectation of profit." For example, was your land rental revenue greater than the property taxes and related expenses to maintain the land?* *Conclusion:* *Even if you <u>do not</u> believe you are "in business," if you are deemed by the CRA to be operating a business, the primary use of the property is for that business, and you have a reasonable expectation of profit, you will be expected to charge GST or HST. You should obtain professional advice from a tax advisor with GST/HST expertise, and perhaps consider a ruling or interpretation from the CRA, before selling the property without GST/HST to avoid the chance of a costly reassessment later. See the CRA Memorandum noted in 7(i) above.*			
8	**Did you buy a housing unit in Canada and sell it within 365 consecutive days of buying it?**			
	If a Yes Answer: Since January 1, 2023, a housing unit in Canada that you owned for less than 365 consecutive days before selling it is treated as a "flipped property." The result is harsher than most people expect. The entire profit is business income, fully taxable, rather than a capital gain of which only one half is taxable. The principal residence exemption cannot be claimed at all, even if you lived there. If you sold at a loss, the loss is deemed to be nil, so you get no relief for it. The rule also applies to the assignment of a purchase and sale agreement. *The rule does not apply where the sale can reasonably be considered to have occurred because of, or in anticipation of, certain life events. These include the death of the owner or a related person; a related person joining the household, or the owner joining a related person's household; the breakdown of a marriage or common-law partnership where the parties*			

	have lived apart for at least 90 days; a threat to personal safety; a serious illness or disability of the owner, a related person or a dependant; an eligible relocation for work or study, generally meaning a move that brings you at least 40 kilometres closer to a new work or school location; an involuntary termination of employment; insolvency; and destruction or expropriation of the property. *Two cautions. First, the life event must be a reason for the sale, so keep a record of the circumstances and their timing. Second, even where an exception applies, the ordinary rules still decide whether the profit is a capital gain or business income, so a quick sale can still be taxable as business income on general principles. Obtain professional tax advice before filing.*			
9	**Did you change the use of a residential property? For example, did you move out and start renting your family home, or did you move into a property you had been renting out and make it your home?**			
	If a Yes Answer: A change in the use of a property is treated as if you had sold it at fair market value on the date the use changed, and immediately bought it back at that same value. This must be reported on your tax return for that year, even though no money changed hands and nothing was actually sold. Income tax may or may not result, depending on the circumstances, but the change should be reported regardless. *Where you move out of your home and begin renting it, any gain up to that date is usually sheltered by the principal residence exemption, so there is often no tax at that moment. An election is available that treats the property as if the use had not changed, which can allow you to continue designating it as your principal residence for up to four more years even though you do not live there. Of course, that election prevents you from claiming the election on another home for those years. The election is not available if you claim capital cost allowance, that is, depreciation, against the rental income.* *Where you move into a property you had been renting, the deemed sale can produce a taxable capital gain on the increase in value during the rental years, again with no cash received. A separate election is available that defers that gain until you actually sell the property. It is not available if capital cost allowance was claimed during the rental period.* *A change of use can also be partial, for example where you begin renting part of your home. Both elections have filing requirements and deadlines, and once capital cost allowance has been claimed the elections are lost, so obtain advice before you change the use rather than afterwards.*			