

Michigan Supreme Court Closes *Klooster* Loophole – But Only Partially

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[Todd W. Simpson](#)

The Michigan Supreme Court has decided the case of *Klooster v. City of Charlevoix* in an unexpected way that leaves room to delay the uncapping of property taxes through joint ownership.

In *Klooster*, the father, James Klooster, conveyed a piece of property to himself and his son, Nathan, as joint tenants with rights of survivorship on August 11, 2004. When James died on January 11, 2005 – just five months later – Nathan became sole owner. Later, in September of 2005, Nathan further conveyed the property to himself and his brother, Charles, as joint tenants with rights of survivorship.

In its March 10, 2011 decision, the Michigan Supreme Court concluded that the Kloosters' property taxes were uncapped for 2006, but not as a result of James' death in January of 2005 – only as a result of Nathan's subsequent conveyance to himself and Charles in September of 2005. That was the reverse of what most had expected. The *Klooster* decision curtails, but does not totally eliminate, the ability to avoid uncapping through joint ownership arrangements.

Joint tenancy should not be entered into lightly. All joint owners will need to consent to any future sale or mortgage and disagreements over use can arise in the meantime. Additionally, gift tax consequences, creditor issues and the impact on the overall estate plan all must be carefully considered.

For those whose primary concern is the uncapping of property taxes, however, the *Klooster* decision presents a planning opportunity. Because the tax and estate issues are complex and because only certain joint tenancies will avoid uncapping under the *Klooster* decision, competent counsel should be consulted.

If you have questions about the *Klooster* decision or the planning opportunities associated with your property taxes, contact Todd Simpson (616.752.2543 or tsimpson@wnj.com) or another member of Warner Norcross & Judd's Real Estate or Trusts and Estates groups.