

## Keeping the Cap on Property Taxes through Joint Tenancy

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The Michigan Supreme Court has reversed the decision of the Court of Appeals in *Klooster v. City of Charlevoix*, but did so in an unexpected way that leaves room to delay the uncapping of property taxes through joint ownership.

In the *Klooster* case, the father, James Klooster, conveyed a piece of property to himself and his son, Nathan Klooster, 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 2005, Nathan further conveyed the property to himself and his brother, Charles Klooster, as joint tenants with rights of survivorship.

The local assessor took the position that the property taxes were uncapped in 2005 as a result of the father's death. The local board of review and the Michigan Tax Tribunal agreed. In a somewhat surprising and controversial decision, the Michigan Court of Appeals reversed those lower decisions and determined that no uncapping had occurred. The court's analysis provided a roadmap for avoiding uncapping: hold property in a joint tenancy and, when death terminates that joint tenancy, simply create a new one – ideally with someone of a younger generation. Using this "serial" joint tenancy strategy, uncapping could be avoided indefinitely under the Court of Appeals' decision in *Klooster*.

On March 10, 2011, the Michigan Supreme Court reversed the Court of Appeals' decision, but it did so in a surprising way. The Supreme Court concluded that the termination of the first joint tenancy as a result of James's death was not an uncapping event, but Nathan's creation of the second joint tenancy with Charles was. That was the reverse of what most had expected. That difference didn't help the Kloosters, but it could help you.

The Supreme Court's *Klooster* decision curtails, but does not totally eliminate, the ability to avoid uncapping through joint ownership arrangements. The first joint tenancy will avoid uncapping, but the second won't; the third will, but the fourth won't; and so on. We don't know how long the uncapping regime will remain in place or how long the legislature will allow the *Klooster* result to stand, but as long as it does, serial joint ownership can significantly reduce the number of uncapping events that would otherwise occur.

Joint tenancy should not be entered into lightly. Disagreements can arise among the joint owners regarding the use of the property and all joint owners will need to agree to any future sale or mortgage. Additionally, the possibility of gift tax liability and reporting obligations upon creation of the joint tenancy, the threat of claims by the new joint owner's creditors, and the potential for upsetting the intended asset distribution under the estate plan are all significant concerns that must be carefully considered (though the recent increase in the federal gift tax exemption for 2011 and 2012 reduces the likelihood of actual gift tax liability).

For clients whose primary concern is the uncapping of property taxes, however, the *Klooster* decision leaves the door open to delay uncapping. Because these issues are complex and only certain joint tenancies will avoid uncapping under the *Klooster* decision, competent counsel should be consulted when creating or terminating a joint ownership arrangement.

If you have questions about the *Klooster* decision or the planning opportunities associated with your property taxes, contact Todd Simpson ([tsimpson@wnj.com](mailto:tsimpson@wnj.com) or 616.752.2543) or another member of the Trusts and Estates group at Warner Norcross & Judd.