



Hi Howard,

You and your Spouse own your Home as joint tenants. Due to the economic climate, your Spouse has incurred significant debt. Your Spouse's Creditors have been successful in obtaining a Judgment against your jointly owned Home. Can the Creditor(s) enforce their judgment debt against your half of the Home as well? Or is the Creditor(s) limited to your Spouse's half of your Home?

This question is one that I have been asked for many years but seems to have been answered once and for all just recently in the case of [Senthillmohan v. Senthillmohan, 2023 ONCA 280](#). The Ontario Court of Appeal made a resounding NO, your half of the Property is not subject to your Spouse's Debts.

The Court of Appeal employed an often-used argument of severing a joint-tenancy which is employed in Marital Separations and Estate Planning. The Court of Appeal held that a joint tenancy is automatically severed when a debtor (one of the two joint tenants) is sued by Creditor(s).

*[14] The process of seizure and execution on debts only contemplates the execution against the debtor's exigible interest in the land held in joint tenancy. For instance, when a sheriff takes sufficient steps to seize property, the joint tenancy is severed and, once severed, the debtor joint tenant has no claim to the whole. So, too, for the creditor, who can now execute against the debtor's share of the tenancy in common.*

In [Re Cameron Estate, 2011 ONSC 6471](#) the Court, when considering a creditor claim against a property owned in joint tenancy after one joint owner had passed, wholly rejected that claim as well and held:

*[25] When one joint tenant dies, its interest in the property is extinguished, and the rights of the remaining joint tenant or tenants are correspondingly enlarged. The enlarged interest immediately vests in the remaining joint tenant or tenants. [See Note 3 below] As the court put it in White (Re), at para. 6, "The characteristic of an estate in joint tenancy is that the joint tenants have the same interests . . . and upon the death of one of the joint tenants the entire estate remains in the survivor in whom the whole estate immediately vests" (emphasis added).*

I invite you to [set up a Zoom](#) appointment with me to discuss your Estate Planning and drawing your Will and Powers of Attorney.

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