

ESTATE PLANNING NEWSLETTER

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for more information about estate planning strategies as well as additional information about other services provided by our firm.

WHO SHOULD OWN YOUR RESIDENCE?

Most people consider their residence to be one of their most valuable assets, but most never consider how best to title the property after the original purchase. However, the titling of ownership of your residence deserves careful consideration, since it has an important effect on the protection of your residence from creditors and on estate and gift taxation. There are several options to title your residence.

Individual Name.

You can hold title to your residence in your individual name even if you are married. But there are some potential disadvantages. At your incapacity or death, a Probate Court administration may be required to handle the property resulting in unnecessary attorneys' fees and court costs. Also, your residence will be subject to claims by your creditors.

Joint Tenants with Right of Survivorship.

When one owner dies, full ownership transfers automatically to the

surviving owner without the need for a Probate Court administration. However, if you transfer ownership to someone other than your spouse, you may incur a gift tax. Also, your residence will be subject to your co-owner's debts, obligations, divorce proceedings or other liabilities. Your co-owner can also transfer his or her share of the property to someone else without your approval.

Tenants by the Entireties.

This form of joint ownership is only available to spouses in some states, including Tennessee and Mississippi. It is similar to Joint Tenants with Right of Survivorship, except that neither spouse can transfer his or her share of the property to another person without the other spouse's approval. A benefit of this form of ownership is that the creditors of one spouse are unable to attach the residence since the other spouse also owns the property. Therefore, titling your residence as Tenants by the Entireties is a

preferred way to preserve some asset protection. In order to avoid a Probate Court administration at the second death, the surviving spouse should transfer the residence to his or her revocable living trust.

Revocable Living Trust.

By transferring your residence to a revocable living trust, a Probate Court administration is avoided at your disability or death. This is the most desirable form of ownership for an unmarried individual. For married couples, the asset protection features afforded from Tenants by the Entireties is often more desirable.

The recommended form of ownership for your residence is determined by your individual facts and circumstances. Please contact our office if you would like to discuss the titling of your personal residence in a manner that complements your overall estate plan and best protects you and your family.

PROBLEMS WITH GIVING ASSETS TO CHILDREN

While they are living, people will transfer title of their assets to their adult children, thinking it will make the administration of the assets easier for their children at their disability or death. Although the transfer of assets to children will avoid a Probate Court administration, and although there may be a valid tax reason to do so, it may also create some problems.

First, when the asset is given away, it is gone. You may think that your children will give the assets back to you if you need them, but they are

not legally required to do so. Family dynamics often change when money is involved.

Second, your assets are now exposed to your children's problems. The assets are now subject to the claims of your children's creditors, to lawsuits against them, to bankruptcies and to division in divorce proceedings.

Third, the gift of assets to your children could create gift taxes. Also, your children receive a "carry-over" basis in the gifted assets, so that when they are sold capi-

tal gains tax will be due. If the assets were instead inherited by your children at your death, the assets would receive a "step-up" in basis that would eliminate or substantially decrease capital gains taxes on the future sale of the assets.

Gift-giving can be a great way to reduce estate taxes if you can afford to make the gifts. However, you should consult an experienced professional to make certain that gifts to your children are made in the most protected and tax-efficient way possible.

LARRY BRAY CONTINUES TEACHING

Larry Bray was recently invited to teach at the 2005 Estate Planning Seminar Series sponsored by the Memphis Bar Association. The seminars were for local estate planning attorneys and were held at the Community Foundation of Greater Memphis.

Larry made a presentation regarding the drafting of trusts to maximize asset protection. He discussed the proper

drafting of a trust established by a parent or grandparent for the benefit of a child, grandchild or other beneficiary so that the assets of the trust, or inheritance, are protected from the creditors and predators of the beneficiary, as well as from division in a divorce proceeding.

Larry also presented planning strategies for high net worth clients who want to transfer the maximum amount of

assets to their beneficiaries with the least amount of death taxes and expenses. These strategies permit the clients to transfer the future appreciation on their assets to their beneficiaries with no gift or estate tax.

Larry enjoyed the opportunity to share with other attorneys the exciting planning strategies he regularly uses in his practice.



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