A trust representative office of National Advisors Trust Company, FSB

Monthly Update for Administration of Trusts from a Trust Administrator's Perspective.

It is our hope that our Monthly Update will be helpful to you and your clients to better understand the administration of trusts from a Trustee's viewpoint.

July, 2016

ACCIDENTALLY SHOOTING YOURSELF IN THE FOOT (A SECOND TIME)

Last month my newsletter discussed the potential pitfalls of relying solely upon the use of a "joint tenancy with right of survivorship" strategy. This month we will look at the use of "tenants in common" and its advantages and disadvantages.

WHAT IS "TENANTS IN COMMON"?

"Tenants in common" is a method in which ownership of real estate can be owned by two or more owners, and each owner owns his or her percentage or fractional share, outright. Each owner can deed his or her share to someone else without having to obtain the signatures of the other co-owners. That ability is completely opposite of deeds that are held in joint tenancy with right of survivorship.

ADVANTAGES

When a husband and wife have a concern for estate taxes, and want to make sure that their assets are divided as equally as possible between them, frequently, a husband and wife will convey property to themselves, or to their separate trusts, as "tenants in common". The net effect is that each spouse will then own one-half of the value of the real estate. When the first spouse dies, only one-half of the value of the estate would be included in the deceased spouse's estate. Similarly, when the second spouse dies, only one-half of the value of the property will be included in that spouse's estate.

DISADVANTAGES

Generally speaking, there are no disadvantages of a tenants in common deed between a husband and wife. However, problems can arise when the parents use a tenants in common deed and name their adult children as co-owners.

THE "WHAT IF'S"

Potential problems of using a tenants in common deed and naming adult children as co-owners with the parents include:

- Once the parents file a "tenants in common" deed putting part of the real estate in their adult child's name, the parents gave up their ability to change their minds.
- A co-owner of property owned as tenants in common can sell that co-owner's share of ownership at any time without having to first get the approval of the other co-owners. That can result in someone else owning the prior co-owner's share, and the new co-owner may not be someone who the parents would ever have wanted to have ownership of the property in the first place.
- What if a co-owner mortgages his or her proportionate share of the property? That can result in a foreclosure of that co-owners ownership interest in the property, and again, result in someone else owning the co-owners share due to a foreclosure.
- What if an adult child is named as a co-owner, and that adult child adds his or her spouse as an owner? That can result in an "in-law" ending up owning the adult child's share, instead of the adult child's children. Also, if the adult child gets divorced, there is a possibility the adult child's share could be divided, with the adult child keeping one-half of the original share, and the divorced spouse receiving the other half. It would be very unusual for parents to want a "former" in-law as a co-owner of the parents' property.

SOLUTION

Use of "tenants in common" can be an effective way of saving estate taxes for a husband and wife who have concern for estate taxes. However, the "what if" possibilities need to be carefully considered before deciding to use a "tenants in common" strategy.

Frequently, for those husbands and wives who have separate trusts, use of tenants in common deeds can be an effective way to make sure that the value of the real estate is equally divided between the husband and wife, and at the same time, the husband and wife (parents) keep total control over the property, keep the right to change their minds in the future if they so desire, and avoid all of the possible "what if's" mentioned above.

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***WealthTrust Oklahoma** is the Oklahoma Trust representative office of National Advisors Trust Company, FSB, which currently has more than $9 billion under administration. We hold a federal charter and are independent.*