

Estate Taxes –Titling of Assets

One of the primary goals of estate planning is to avoid or reduce estate taxes and pass the maximum amount of property to one's heirs. The best tool to achieve this is the estate tax applicable exclusion amount – currently \$1.5 million for each person, increasing under current law to \$2 million for the years 2006 through 2008 and to \$3.5 million in 2009. For a married couple with a potential estate tax, effective estate planning will insure that the exclusion amounts of both spouses are utilized. The will of a husband who leaves everything to his wife will avoid estate tax upon his death due to the marital deduction, but all of the assets will then be subject to taxation upon his wife's death. In order to glean the benefit of his estate tax exclusion amount, the first spouse to die should structure another way to transfer assets.

To use both spouses' estate tax exemption amount, the first spouse to die could transfer property to a trust. Any property in excess of the exclusion amount would then pass to the surviving spouse. Often called a "credit shelter," "family," or "bypass" trust, the trust allows a transfer to lower generations without incurring estate tax upon the first spouse's death and without then being included in the estate of the second spouse. The surviving spouse may even have a right to distributions from the trust. In order for this estate plan to be effective, it is important to have the correct ownership of and titling of assets. How an asset is owned will determine whether it is included in the first to die's estate and who will then own it.

Assets may be transferred at death in one of several ways, depending on how the assets are owned. Transfers could be by operation of law (property law through a right of survivorship or by contract law through a named beneficiary designation), according to the provisions of a trust document, or by will. Commonly, married couples own their assets as joint tenants with right of survivorship, with assets passing to the survivor by operation of law. Having all marital assets owned jointly with right of survivorship is an estate tax trap.

For detailed information please don't hesitate to call.

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