



The Well Kept Secret In Estate Planning: *Using An Irrevocable Trust To Hold Life Insurance*

Many people become familiar with estate tax rules when they do their initial estate planning: Wills, Powers of Attorney, Living Wills, and HIPAA Waivers. If you have never done basic planning, we should talk and now is the best time to get started. However, whatever your tax knowledge, let's just review.

Basic estate tax rules can be condensed as follows: 1) Anything you leave a spouse (provided they are a US citizen) is estate tax free; 2) Anything you leave to non-spouses, in the aggregate, is estate tax free up to \$2,000,000 (in 2007); and, 3) Any amounts you leave non-spouses in excess of \$2,000,000 are subject to a 45% tax (in 2007).

At first glance it seems unlikely that many would have a tax problem under these rules. However, problems are often created or magnified by the ownership of life insurance. While life insurance is typically income tax free, it is estate taxable. And, though it is beyond the scope of this article, yes, there are ways that your life insurance becomes income taxable if not properly structured.

Most of us do not think of life insurance as being a problem because we typically designate our spouse as the beneficiary. At an individual's death, if their spouse is the beneficiary of their life insurance, there is no estate tax because of the marital deduction. However, at the surviving spouse's death, any amounts remaining and distributable to the surviving spouse's heirs would be subject to the estate tax if the surviving spouse's assets (including the remainder of the insurance proceeds) exceed \$2,000,000. The effect is the same if the surviving spouse owns life insurance and the proceeds are distributable to their heirs.

This is a potentially significant problem for many individuals. What is the solution? *Using an irrevocable trust to own and be the beneficiary of the life insurance.*

As the name implies, the trust is irrevocable, meaning it cannot be amended or otherwise changed after it is created. The trust is created to be the owner and beneficiary of life insurance on the sole life of one individual or on the joint lives of husband and wife. If sole life insurance is used it is usually expected that income and principal is needed by the surviving spouse. If joint and survivor life is used it is often expected that the insurance proceeds will help pay estate taxes after both spouses die.

If the trust is created to hold life insurance on the life of a sole individual, the other spouse and their children can be the beneficiaries of the trust. The spouse can even be the trustee with appropriate restrictions. If joint and survivor life is used, neither spouse, since both are insured, will be beneficiaries or trustees of the trust.

For example, husband has \$2,000,000 of assets, wife has \$2,000,000 in assets and husband owns a \$1,000,000 life insurance policy on his life payable to wife. The policy could generate as much as \$450,000 of estate tax if both husband and wife die in 2007. This estate tax could be avoided by creating an irrevocable trust and transferring the ownership and beneficiary to the trust.

If you believe your estate tax situation or the amount of the life insurance you own causes you to be interested in the use of an irrevocable trust, we would be happy to discuss it with you; please call and make an appointment. While the irrevocable trust holding life insurance has been around for many years, it is a sophisticated form of planning. If it is not structured correctly it could lead to significant problems. We can help.

About the author: Bob Stewart specializes in estate planning, trusts and probate as well as business law and taxation and is a frequent guest lecturer among industry, professional and civic groups.

S U M M E R 2 0 0 7

As we begin our 21st year of practice as a law firm, we thought it might be nice to reintroduce each of our attorneys and their areas of expertise. SS&R is AV rated by *Martindale Hubbell® Law Directory* signifying that our peers in the legal community deem the firm to have a Legal Ability Rating and a General Ethical Standards Rating that is very high to preeminent.

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Avoiding Landlord Pitfalls

Although Colorado's reign as the nation's leader in home foreclosures has technically ended, many Colorado residents are still losing their homes to foreclosure. This also means many Colorado investors have become landlords for the first time after buying a foreclosed property.

With an increasing number of foreclosure investors becoming landlords, are you legally protected when a less than tidy tenant fails to pay rent or abandons and leaves your property in a state of disrepair? The first step to avoiding your investment becoming a nightmare is good tenant selection. Effectively screening potential tenants is a must. A good rental application that includes a background and credit check is recommended. Next, have a good written lease agreement. In addition to basic provisions such as the parties' names, the lease term, and monthly rent, for example, the written lease agreement also should have specific provisions addressing other potential issues, such as the security deposit, utilities, defaults and remedies, including a provision that allows the prevailing party to recover his/her attorneys fees should a dispute arise, and restrictions on use. Other useful provisions may include abandonment and a non-assignability clause, wherein the tenant cannot assign or sublet any portion of the lease without your written consent. This also helps you control who is living in the residence.

Good tenant selection and a clear written lease agreement are not enough. Before your tenants move in, document the condition of the property. A good way to document the condition of your property is to take photographs or a video recording. Also, have a written move-in/move-out inspection document that allows the tenants to fill in and describe the physical condition of the property. The more detailed this document is the better. Do a walk-through with the tenants to go over the condition of the property or at least have them return the signed walk-in inspection within 5-10 days of moving into the property. Verify that the information from the tenants is correct and give them a signed copy of the walk-through inspection.

Periodically schedule a walk-through with the tenant so that you can inspect the condition of the property and keep detailed records.

So you did a credit check, have a good written lease agreement, have photographs or video of the property, and did a walk-through; but the tenant is still a problem. Colorado statutes require specific notification and other procedural steps before you can evict a tenant. In addition, as a landlord, you must give timely written notice to the tenant if you are retaining any portion of the tenant's security deposit. Failure to strictly comply with these laws can result in the landlord being liable to the tenant, sometimes for a significant amount.

If you have concerns about being a new landlord, are an existing landlord that needs to update written documents, or have other issues with problem tenants, we would be happy to help you.

About the author: Brian R. Becker received his J.D. from the University of Denver, College of Law in 2004 and his primary practice areas are Real Estate Law, Civil Litigation, Business Law and Insurance Defense.

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