# JOINT OWNERSHIP AS AN ESTATE PLANNING TOOL

Clients frequently desire to avoid the probate process to transfer their home and other assets upon their death. One method frequently requested is the preparation of a Quit Claim deed, which serves to add the name of an intended beneficiary as owner of the home to avoid the probate process. The term Quit Claim deed refers to a type of deed that transfers ownership of real estate without any types of warranties. The types of ownership conveyed in a Quit Claim deed are varied. When we intend to pass ownership to a survivor, a deed is prepared wherein the person conveys the property to themselves and one or more persons as joint tenants with full rights of survivorship. Real estate jointly owned with rights of survivorship has the effect of terminating the ownership interest of a deceased person at the date of their death. While jointly owned assets avoid probate, there are serious disadvantages in relying upon joint ownership for estate planning purposes.

One problem in owning property jointly is that such a plan assumes that death will occur in the proper order. If the wrong person dies first, or if both co-owners die together, the estate plan will not achieve its intended purpose. A second problem is a joint tenant's creditor may have access to the property to pay off his or her debt. Additionally, if an individual is injured on the real estate, the injured individual could bring an action against all the owners of the property. Thus, a joint owner could become a party to a lawsuit. Another problem occurs due to loss of control of the property. Once property is made joint, you generally cannot sell it without the consent of the co-owner and if the co-owner is a male, the consent of the co-owner's spouse may be necessary to sell the real estate.

There are tax implications of joint ownership that must also be considered. In addition to gift tax concerns, capital gain tax implications occur. The determination as to a capital gain calculation is different for assets where ownership commences upon the date of death than a situation where a person became an owner prior to the date of death. Capital gains tax is normally much less for assets that are transferred as of the date of death rather than during the lifetime of the individual who purchased an asset. In calculating a capital gains tax for an asset wherein the ownership is transferred as a date of death, the capital gains tax is determined by calculating the difference between the fair market value of the asset as of the date of death of the owner and the sales price. In a situation where ownership is transferred by means of joint ownership, the calculation for determining the tax will depend upon the amount contributed by each joint tenant towards the original purchase price. In situations where property has substantially appreciated since the date of purchase, the amount of taxable gain of the property could be substantial.

A very effective means of avoiding probate and still obtaining the tax benefits of transferring ownership, as of the date of death, is to establish a trust. A trust is in essence a contract, which describes the manner in which property is owned, managed and distributed. During a person's lifetime, the person who set up the trust is the trustee or agent of the trust. The trustee maintains complete control of the trust during their lifetime. In the event the trustee becomes disabled or passes away, a successor trustee steps into the place of the original trustee and administers the assets as provided in a trust agreement. The trust agreement itself empowers the trustee to manage the assets. A properly prepared and funded trust avoids probate. It provides the original owner complete control of the asset owned by the Trust, distributes the assets in accordance with an individual's wishes upon their death and is able to utilize the capital gain savings for assets, which have substantially appreciated. If you have any questions regarding the information contained in this article or any other estate planning matters, please contact Joseph G. Couvreur at Pentiuk, Couvreur and Kobiljak, P.C. at (734) 281-7100.