

Alternatives to Owning Home in Spouse's Name

By Cameron Taylor, Executive Director of the National Medical Foundation for Asset Protection

A recent survey finds that approximately one-third of the nation's medical doctors own their home in the name of a family member for lawsuit protection. Although this strategy has worked in the past and, to a degree, it may even work in the future, there are some very real dangers that make it, at best, an antiquated strategy.

Surprisingly, this advice is most often circulated, not by doctors, but lawyers who neither have been trained nor taught asset protection. Because asset protection was not taught in law schools until 10 years ago, less than .01 percent of lawyers in the country today even claim to specialize in this field.

What seems to elude these well-meaning advisors is just how dangerous this practice can be in the 21st Century litigation environment.

Compounding the problem, the fields of medicine and law have such little overlap, that professionals from each have a hard time discerning each other's technical terminology. This divide may make it hard for some medical professionals to tell the difference between a quality strategy for titling homes and an uninformed, "pass along" solution. In the following sections, a simplified list of alternatives for titling a home is included.

The Alternatives

Homestead Exemption Laws- Six states have superior homestead exemption laws (Florida, Texas, Iowa, Kansas, South Dakota, and Oklahoma) that protect a family's primary residence from being taken by creditors. Five other states offer realistic homestead protection with more than \$100,000 of equity in homes protected (Minnesota, Nevada, Rhode Island, Massachusetts, and Arizona).

The remaining 39 states, however, often have woefully outdated laws that generally protect between \$10,000-50,000 of equity in a home.

The Living (or Revocable) Trust-These have been in widespread use since the 1950's as a way of avoiding

estate taxes and probate. Some litigation prone professionals title their home in the name of a trust because of supposed legal shielding from lawsuits and other creditors. Unfortunately, revocable trusts offer very little in the way of lawsuit protection.

Even if assets are owned in a spouse's trust, all the disadvantages of owning family assets in the name of just one spouse also applies to holding assets in just one trust. Living trusts need to be used in conjunction with other legal entities for asset protection.

The Irrevocable Trust-This trust offers very good lawsuit protection but it is rarely used to title a home because of the inflexibility of its provisions. The upside is: it is very difficult to seize assets in this trust when drafted correctly. The downside is: it is very difficult to change anything in this trust. Also, many of the tax benefits of home ownership are lost through this trust.

Once a professional has placed a home into an irrevocable trust, it will remain unmovable, under the control of a third party trustee. The rigidity of this trust makes this a difficult option for most professionals.

Foreign or Offshore Trusts-These have become popular among some estate planners in recent years. If a homeowner transfers control of a home or other assets to a foreign trust, a creditor would generally have to sue in the country where the trust is held to recover any of the trust's assets.

This form of ownership may prolong and complicate lawsuits against assets. But it should be remembered that there are real dangers in some foreign and offshore trusts, including the trouble and expense of having to comply with foreign laws. Also, there must be enough assets to justify spending the \$15,000-30,000 often charged to establish such a trust and thousands more each year to maintain them.

Corporations- Some people deed their homes to family corporations. These are separate legal entities with shares of stock representing the ownership in the corporation. Shares can be given to children,

grandchildren, and other family members with the parents acting as the officers and directors of the corporation. There is some lawsuit protection with this method of ownership because the corporation owns the house and others own the stock.

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But this strategy also means sacrificing your mortgage interest and capital gains tax exemptions. And in order to avoid double taxation on your property there are some very complex tax considerations. Furthermore, you must make sure to adhere to all the formalities of any other corporation including regular meetings, minutes, and voting procedures. Few professionals ever use this strategy.

Family Limited Partnerships (FLP)- Although doctors around the country have been placing their medical practices into professional Limited Liability Partnerships (LLP) for years, the idea of placing their personal assets into Family Limited Partnerships (FLP) is a phenomenon of recent years.

This form of ownership has become popular among the estate planning and asset protection communities as a way to title homes of lawsuit prone individuals. While traditional FLP's may jeopardize some tax benefits of homeownership, up-to-date estate planning specialists can coordinate family partnerships with these tax considerations.

Limited Partnerships have been in existence for almost

90 years and have retained an impressive record for lawsuit protection into the 21st Century. If a court tries to seize a doctor's property because of exclusions in his or her insurance policy or because a payout cap fails to cover an entire judgment, the law protects assets titled inside a FLP.

And as an added bonus, a well-drafted FLP includes provisions that could require those going

after your house, property or bank account to pay the income taxes on the income generated within the partnership.

Conclusion

Whether doctors title their homes through trusts, corporations or family limited partnerships, there are far better asset protection options in today's legal environment than simply putting the house in a spouse's name. ■

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This article is written with the understanding that the author is not engaged in rendering legal or accounting services.

¹ Source: Uniform Laws Commission web page, "A Few Facts About the Uniform Fraudulent Transfer Act" http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-ufta.asp

² IRS Revenue Ruling 77-137