

Professional Portfolio

Legal: **Thomas M. Butz**

Real Estate Ownership and Estate Planning

When individuals sit down to plan how their assets will be distributed and transferred after they pass on, often not enough time and thought is invested in determining the most effective and efficient way of handling what is usually the most significant asset of a decedent's estate: a person's home. This lack of planning may result in unintended and unwanted costs and tax consequences. However, a little extra time and effort familiarizing oneself with the nature of his or her ownership, the potential consequences of that ownership, and the current and future circumstances goes a long way towards preventing these problems.

There are two basic ways of owning real property: sole ownership and joint ownership. Where only one person's name is on the title (Deed) to property, he or she has sole ownership. Joint ownership occurs where two or more individuals are named on the title as owner. Within joint ownership there are two major categories: joint ownership without survivorship rights (tenants in common) and joint ownership *with* survivorship rights (joint tenants). As the name makes clear, joint ownership with survivorship rights means that when one joint owner dies, title to the property *automatically passes* to the remaining owner(s). When married individuals are named together on the title to real property (along with some other requirements), Pennsylvania law generally presumes they own the property as tenants by the entirety, which is the form of joint tenancy that applies to married joint owners. Generally, however, if the joint owners are not married, survivorship rights are not presumed under Pennsylvania law unless it is expressed in the deed or by necessary implication. Usually the language used will be something like the following: "A and B as joint tenants with the right of survivorship and not as tenants in common."

There are advantages and disadvantages to the different ways of owning property. Obviously, the advantage of being the sole owner of property is that the owner has total and complete discretion to handle the property as he or she pleases. Furthermore, sole ownership guarantees that the real property owned upon death will be controlled by the owner's will and that the beneficiary receiving the real property will receive as his or her tax basis the fair market value of the property on the date of the owner's death. This "step-up" in tax basis may result in decreased taxes when the beneficiary later sells the property. On the other hand, solely owned property becomes a part of the owner's estate for probate, which can incur significant costs, and is also subject to Pennsylvania inheritance tax and the federal estate tax and may have implications should an individual apply for and receive Medicaid benefits.

With respect to jointly owned property with survivorship rights, the primary advantages are the ability to automatically transfer to the joint owner or owners the property immediately upon one's death and the ability to avoid probate costs, a part of inheritance tax and the federal estate tax with respect to that particular piece of real property. On the other hand, owning property as a joint tenant with others can place the property at risk to a joint owner's creditors, can limit a single owner's ability to make decisions relative to the property, including the sale of his or her ownership, and may function to cause tension and the feeling of being disinherited by those not named as joint owners, which may not be the intent of the owner. Furthermore, the remaining joint owner(s) will not receive the "step-up" in basis for federal income tax purposes that a beneficiary receives with inherited real property, which may result in increased capital gains upon the sale of the property and, in turn, increased income tax.

As is clear, there is no right or wrong way of owning property when it comes to planning for the future. Each has its own pros and cons and which is best truly depends on your circumstances. Moreover, the decision to change the current form of your real estate ownership should not be considered limited to individual ownership. Corporations and other business entities are not immune from the need to make decisions on property ownership as considerations including asset protection, business continuity and tax ramifications should be taken into account in planning for the future of a business. Make no mistake, decisions regarding property ownership are neither simple nor easy; it takes time, thought, and sometimes creative thinking to look into the future and determine how best to handle your property.



Thomas M. Butz is a Partner in the law firm of Smith Butz, LLC and concentrates his practice in the areas of Estate and Trust Administration, Estate and Trust Administration, Asset Protection and Civil Litigation. Smith Butz, LLC is a full service law firm located in Southpointe at 125 Technology Drive, Suite 202, Canonsburg, PA 15317. For more information, call 724-745-5121 or visit www.smithbutzlaw.com

