

Whose ewe is it anyway?

Showing sheep has been a fun experience for our family. Meeting people, learning skills and seeing different parts of the country continue to provide happy memories. When you win a class or two, the satisfaction just gets better. Some of the best time is the travel time with the kids! Stories are told that work their way into family lore—embellishment and all!

What's the worst time—when the one you thought was the better lamb is second to the other one! Have you ever tried to be fair—divvy up the show sheep so each has a “good one?” Next thing you know, the judge messes it all up and one “wins” the family competition in every class. That's when you pull out “...but this is a family project.” Right?

Ownership—if it's right, it's wonderful, if it's not, an entire show season is not as fun. Ownership in property can offer some of the same pitfalls. Chances are, you have not spent much time contemplating the “vesting” or ownership of your assets, particularly real estate assets and its ultimate effect on the disposition of your estate. As discussed in previous months, estate values have a way of increasing over time to the point that we may have to work with the transfer tax system of the IRS. With the current uncertainties in Washington, the transfer tax exemption levels need to be closely monitored—if no action is taken by Congress, we are all faced with an exemption of only \$1,000,000 per person after 2010.

The vesting or ownership in your real estate assets can provide you with much needed flexibility in preparing to deal with the transfer tax. This column will describe three common forms of vesting. As always, there are other options that need to be discussed with your attorney and financial planner.

The three common forms of vesting are 1) Joint Tenants with Rights of Survivorship (JTWROS); 2) Tenants in Common (TIC); and 3) Individually. None of the three are the “correct” or “incorrect” vesting. What you use and what your neighbor chooses is entirely dependent upon your own financial profile and plan. Property vesting is not an area to “keep up with the Jones!”

To assist in explaining the importance of ownership, let's assume we have a husband and wife who own real estate with a total value of \$4,000,000.

Joint Tenants with Rights of Survivorship. This is likely the most common form of real estate ownership among married individuals. The vesting is self explanatory—the property is owned jointly and upon the passing of one owner, the “survivor” assumes full ownership. If your estate is small enough to avoid transfer taxes, this vesting allows for easy transfer of real estate assets. There can be instances in smaller estates where you may not want ownership to pass automatically to the surviving spouse.

Under our scenario, upon the death of either spouse, the surviving spouse automatically owns all \$4,000,000 in real estate. There is no transfer tax due, yet. The challenge is that the deceased spouse, in effect, has lost their \$2,000,000 exemption due to the vesting in the property. The automatically transferred ownership was not “exposed” to the transfer tax system.

Tenants in Common. TIC allows for individuals to direct the disposition of an asset via a will or other similar document. TIC owned property carries a percentage ownership—usually 50/50 for husband and wife. Especially in instances where an estate may be subject to transfer taxes, TIC ensures that each individual will be able to take advantage of the transfer tax exemption in effect at the time of death.

Under TIC, the scenario we have has a different look. Upon the passing of a spouse, the will of the deceased person drives the new ownership. In most cases, someone in the next generation will assume ownership of the real estate asset and the surviving spouse could be granted a “life estate”, entitlement to all income produced by the property, for their remaining life. With the TIC separation, the first spouse’s death “exposes” the real estate to the transfer tax system. Under current law, the \$2,000,000 value is exempt and no transfer tax will be due.

Individually. Vesting to an individual (usually shown as “a married man” or “a married woman”) will act in a similar fashion as TIC. The will of the deceased individual drives the new ownership and an estate is in a position to take full advantage of the transfer tax exemption in effect at the time of death.

As you can see, reviewing the vesting on your real estate assets is important to the ultimate disposition of your estate. If changes are appropriate after review by your attorney and financial planner, expect to pay a fee to have a new deed drawn up along with a recording fee for each property involved.

So now when you take the time to divvy up the show string ownership for this show season, keep in mind that in the long run, time to divvy up real property ownership will affect your financial plan for generations!

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