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WEALTH MANAGEMENT

Avoid the Pitfalls of Improper Asset Titling

Your home is probably the most valuable asset you own, and how it is titled can have far-reaching effects that may not be immediately obvious. The "title" of an asset is a legal document that specifies who owns the asset and what happens to the ownership of the asset when the current owner passes away. It also determines how the property can be financed, improved upon or used as collateral.

Many homebuyers don't consider, or aren't aware of, their options for titling their property until they are approached by the title company during the closing process. By that time, it may be too late to implement the strategy best suited for their needs.

Failing to properly title your home can lead to unintended consequences — in some instances, the type of ownership specified by an asset's title can lead to outcomes that contradict or override the instructions left behind in a will. Whether you're refinancing or purchasing a new home, getting the titling right at the outset is critical.

The Benefits of Proper Titling

A well-thought-out asset titling strategy allows you to control what happens to your assets, can minimize your exposure to taxes, and ensures that your wishes are carried out in the simplest and most efficient way possible. How you decide to title your assets will depend on the nature of the asset in question and what it is you want to accomplish, both when you are living and when it comes time to transfer the asset after your death.

Exhibit 1. Common Forms of Ownership

Type of Ownership	Issues and Concerns
Sole Ownership	– Transactions can be executed quickly – Potential legal implications regarding transfer if owner dies or is incapacitated
Joint Ownership	– At one owner's death, property passes automatically to surviving owners – May cause taxable gift if non-spouse tenants do not contribute equally – Cannot unilaterally remove joint tenant once named – Creditor of one tenant may attach the property
Community Property	– In some states, this is the default title for married couples; both own equal shares – At one owner's death, his or her portion passes per will, trust or intestate laws – Only available in 10 states
Tenants-in-Common	– At one owner's death, property passes to decedent's heirs per will, trust or intestate laws – Useful for property owned jointly by non-related parties; owners may own unequal shares – Surviving owners have no say in future co-owners – Subject to probate at death of owner whose interest is titled in his or her individual name – Creditors of one tenant may attach that tenant's interest
Living Trust	– Property held in the name of trustee – Trustees can buy, sell and refinance real estate at their own discretion – Reduces taxes on estate upon owner's death – Setup and maintenance can be costly – Some banks will not provide financing for properties held by legal entities

Skipping the Probate Process

Probate is the name for the formal court process through which your estate is passed on to your heirs after death. Depending on where you live, it could be a relatively quick process or it could be long and drawn out — up to 18 months in some states, and perhaps longer. By making sure that your assets are titled in a manner that skips this process entirely, you may save your heirs a lot of time, effort and money.

Certain types of ownership allow you to pass control of your assets to a joint owner, such as a spouse, without having to go through probate. These include:

– Joint tenancy with rights of survivorship (JTWROS)

– Joint tenancy by the entirety

Not all types of joint ownership function this way. For instance, if an asset is titled as joint ownership with "tenants in common," the surviving owner does not automatically take ownership of a deceased owner's share of the asset — the ownership is determined by the decedent's will.

You may also transfer ownership of your assets to a trust that you've created. Upon your death, the trust assets would pass directly to your beneficiary without the need for probate.

For example, consider the case of a man who purchased a new house, valued at $1.5 million, in California. He held the title as the sole owner and relied on his will to pass the home on to his three children. Upon his death, the children needed to go through the probate process to take ownership of the home, resulting in a minimum probate fee of $28,000. (If their father had a personal representative who also chose to take a fee, the cost could be as high as $56,000.) In order to complete the transfer, either the man's estate or his children needed to come up with a significant amount of money. Had the man established a trust for the purposes of holding the title to the property, however, he could have avoided the probate process — and this fee — altogether.

Minimizing Taxes

Depending on how an asset is titled, it may be eligible for a "step up" in basis when it is transferred. The basis is the original value of the asset in question; the difference between the basis and the value of the asset when it is sold is subject to capital gains taxes. The basis of assets that are held in an individual's name ("sole ownership") or as community property is "stepped up," that is, increased, to match the value of the asset at the time of transfer. This means that the inheritor will only have to pay taxes on any growth in the value of the asset that occurs after the transfer, should they choose to sell it. Other forms of ownership may only be entitled to step up a portion of the basis upon transfer, depending on the circumstances.

A Balanced Approach to Planning

It's important to consider the long-term implications of putting assets in a trust before choosing this path. By titling your assets in the name of an irrevocable trust, you are ceding ownership of them. This may make it difficult, if not impossible, for you to use those assets as collateral in the event you should need to borrow in the future. When designing the trust, work with your attorney to ensure that you've considered your future needs and have drafted documentation that is flexible enough to accommodate them. Once an irrevocable trust is established, you typically cannot make changes to the terms of the trust.

Issues such as these, where your estate plan may conflict with your present or future needs, demonstrate the importance of working with advisors who are able to help you develop a well-balanced plan. In the case of your home, you may find that not all mortgage lenders allow title to be held in a trust or LLC. A thoughtful, experienced wealth manager can work closely with your trust and estate attorney, your accountant and your banker to devise a financing strategy that ensures you are able to successfully navigate this complex territory without undermining any aspect of your plan. Together, you and your advisors can evaluate your assets, choose the appropriate titling strategy for each of them and conduct regular reviews to determine whether updates must be made to incorporate new assets or changing circumstances.

At BNY Mellon Wealth Management, we can partner with you and your advisors to identify the asset titling solutions that might best suit your needs. Our experienced team — which includes wealth managers, wealth strategists, residential mortgage bankers and private bankers — works together to understand your broader objectives and to provide customized mortgage solutions that maximize your tax advantages.

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