Life Planning Newsletter
The Law Offices of James A. Busse Jr.
Long Beach CA, Carson City NV.
July 2008

In this issue:
Planning .... **Asset Protection for the Wary.**
...They can't take my Home... Can they?

Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning. We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse,com

Protecting your home from Creditors.

Many of my clients ask me what they can do to keep their home from being taken by creditors.

For some clients, it is too late. They have already been sued or have already filed bankruptcy. Once a lawsuit is filed against you (actually once you know or should have known a lawsuit in coming your way) any transfers of your property is suspect and a court can and most likely order you to undo the transfer or to undo or void the method you used to "protect" the home. So the time to plan and protect your home is now.

This newsletter will cover some of the more popular protection methods and comment on their effectivity. Some work and some do not. There is a large legal industry focused on breaking asset protection schemes. The IRS is the leading entity in that industry.

Homestead Exemption

One way to protect your home's equity from creditors is to file a Declaration of Homestead. The form is simple and is available from the Los Angeles County Recorder's web site http://www.lavote.net/GENERAL/Form_Downloads.cfm. Homesteading the house protects it from most creditors. Homesteading in California can be declared or assumed. Both protect up to $50,000 - $125,000, depending on the situation, in equity from creditors. So they can take all but that if they lien the property and a judge orders the property sold. Declaring Homestead rather than relying on the statutes gives the homeowner a large advantage if they are sued. It is a good idea to Homestead your home.

Nevada is similar to California but the Homestead must be declared or the homeowner is left with no protection.

If you do not plan to retire in California be aware that some states have no homestead protection and even if you declare the home your homestead, a creditor or bankruptcy court can take it all. These states are Connecticut, Delaware, Maryland, Pennsylvania, and Rhode Island.

Contrarily, some states offer substantial homestead protection even from Bankruptcy. Those states are: Florida, (now you know why OJ lives there), Iowa, Kansas, Minnesota, Oklahoma, South Dakota, and Texas. Those states do have some limits for LAND but the limits are hard to reach. But, a homesteaded home owned and occupied by the owner is absolutely exempt from creditors and from bankruptcy no matter the home's value even if some of the land surrounding the home is not. For instance in Florida, one can protect the home plus 1/2 acre in a town and 160 acres in the country. (OJ lives outside a town's boundaries).

So if asset protection is something important you may want to consider asset protection friendly States for your retirement.

QPRT

A QPRT is a Qualified Personal Residence Trust. It is an irrevocable Trust where the Settlor or married couple gives their home (or vacation home) to their children sometime in the future. The Settlor(s) reserves the right to live in the home for a period of years. If the Settlor(s) lives longer than the period of years set in the trust the gift is complete. If the Settlor(s) does not outlive the period of years the home is pulled back into the Settlor's Estate and no savings is gained. (A common hedge against death during the term is to insure the Settlor's life for an amount equal to the estimated estate tax on the value of the home. An insurance policy held by an Irrevocable Life Insurance Trust is an ideal hedging strategy). Newsletter October 2007.

The tax advantage of a QPRT is that the gift tax is paid on the discounted value of the residence. The equity then grows estate tax free. The actual benefit of the QPRT is a function of the IRS tables in force when the QPRT is established. When the Settlor transfers the home to the QPRT, the transfer is a taxable gift under the gift tax law. However, the amount of the gift is not the full value of the residence, but the value reduced by the value of the Settlor's retained right to use the residence for the period specified in the trust. A gift tax return is filed but unless the value is over $1,000,000 no tax will be owed.

QPRTS have been out of favor recently because the Estate Tax Deduction is greater than the Gift Tax Deduction. In 2008 the Estate Tax Deduction is $2 million, in 2009 it is $3.5 million but in 2011 the current law has the estate tax deduction matching the gift tax deduction of $1 million. So some folks are now taking advantage of low property values which will probably rebound within 15 years and the current political climate of a high probability that taxes will soon increase.

The following example shows the potential estate tax savings of a QPRT. Hank, a widower aged 67, owns a home worth $500,000. Hank owns other assets which puts him in the 45% percent estate tax bracket. ($1,000,000 in 2011) Hank has a life expectancy of 15.2 years. After consultation with his estate planning attorney and CPA, Hank decides to create a 15-year QPRT. At the end of the term, the property will pass to Hank's children outright. The applicable IRS table rate for the month in which the QPRT is established is 8.4 percent. Hank estimates that the property will appreciate in value a conservative 3% per year.

Without QPRT
Present value of residence: $500,000
Value of residence at Hank's death: $778,984
Estate tax paid on home: $350,542
Net to children at Hank's death: $428,441

With QPRT
Present value of residence: $500,000
Amount of taxable gift (no cash to IRS): $75,060
Value of residence at Hank's death: $778,984
Estate tax paid on residence: $0
Less adjustment for use of exemption: $37,530
Net to children: $741,454

Summary
Net to children without QPRT: $428,441
Net to children with QPRT: $741,454
Children Gain (estate tax savings): $313,013

The key to the QPRT is that the gift grows Estate tax free. However, if the children sell the home they will owe capital gains tax based on the value of the home on the date of the gift and not on the value on the date of Hank's death. But since capital gains tax is less than 1/2 that of Estate tax the overall tax savings is still substantial.

Also, since Hank doesn't own the home, it is protected from his creditors. They can not lien what he doesn't own.

The next newsletter will review Family Limited Partnerships and Foreign Grantor Trusts as asset protection strategies.

The Law Offices of James A. Busse Jr.
3937 Elm Ave.
Long Beach, CA 90807
(562) 490-4905
trust@jabusse.com www.jabusse.com