UKOHA-AJIKE Law Group, P.C.

July Newsletter!

by Endy Ukoha-Ajike

Real Estate Inheritance

Real estate is still the most widely held asset owned by Americans. Whether it is your home that you live in or income producing real estate that you own, it is important to determine how best to pass it on to your loved ones to maximize the appreciation and minimize the amount of taxes paid when it is passed on to your loved ones.

This Newsletter is Part 1 of a 2 Part Series and focuses on the first 4 of the most common ways of transferring your real estate and their consequences:

1. Joint Tenancy With a Right of Survivorship (JTWRS)
2. Community Property With Right of Survivorship (CPWRS)
3. Tenancy in Common (TIC)
4. TODD: Transfer on Death Deed – New in California

In Part 2, our August 2017 Newsletter, I will address these additional 4 common ways of transferring your real property:

Upcoming Events

- August Seminar -

Real Estate Inheritance

Common Ways of Transferring Title to Your Heir(s)

Join us at our office for our August Seminar with Guest Speaker Alex Sandoval, Real Estate Broker.

Wine and Appetizers Included! Free to Attend. Space is Limited. Please Register to Reserve your Spot.

Date: August 24th, 2017

Time: 6:15pm - 8pm
Doors Open @ 6:15pm
Presentation @ 6:30pm

Location:
Ukoha-Ajike Law Group Office
@ Jack London Square
70 Washington St, Suite 303
Oakland, CA 94607

1. Wills/ Probate
2. Trusts
3. Outright Gifts
4. Use of Entities: Limited Liability Company (LLC), or Limited Partnership (LP)

Join us to discuss this topic in more detail at our upcoming free seminar on Thursday, August 24, 2017 with Guest Speaker and Real Estate Broker, Alex Sandoval. RSVP to join!
~ Endy

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4 of the Most Common Ways of Transferring your Real Estate to Your Heir(s) and Consequences of Each

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1. Joint Tenancy With A Right of Survivorship (JTWRS):

This happens when two or more persons jointly own property. Most times, an owner adds another person's name to the title on their real property. The entire property transfers/passes "automatically" to the surviving JT at the death of the first JT.

Consequences:

- The property is exposed to the creditors of ALL the owners on title. As a result creditors of the new owner may access the property to satisfy their debt.
- It could lead to unintended disinheritance of children from a previous relationship if the JT is between spouses in a new relationship who have children from a previous one.
- Creditors of the deceased JT cannot satisfy their debt by going after the property.
- A tax consequence is that upon sale by the surviving joint tenant, he/she would pay

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Mark Your Calendars!

Our seminars are held on a bi-monthly basis at our cozy office in Jack London Square.

Future 2017 Seminar Dates

- Thursday, October 26th

Contribute to the Conversation!

Our goal is to make our seminars as informative and interactive as possible. Please let us know if there is any topic you would like to hear about at an upcoming seminar.

Endy's Advice Corner

While each of these methods on its own sounds simple to do, it is very technical and could pose a minefield for the unwary. If not done right it often leads to protracted and unnecessary expensive litigation. Avoid that and consult with counsel who practices in this area. It is your property and primary asset. You have worked to earn it. Pass it

capital gain taxes (Federal and State) on one 1/2 of the gain on the sale of the property if the property has appreciated, and the seller does not qualify for the IRC Section 121 exclusion. Under that section seller must have lived at the property as her primary residence for 2 of the last 5 years.
- There may also be transfer taxes payable at the local level (City and County), upon transfer due to the “change in ownership.” Those taxes may or may not be exempt depending on the circumstances.
- There is no probate or court involvement required for transfer to the surviving joint tenant.

2. Community Property With Right of Survivorship (CPWRS):

Husband and Wife take title jointly, but as husband and wife as community property with right of survivorship.

Consequences:

- All of the consequences under Joint Tenancy above apply except that the surviving spouse receives a “stepped up basis” in the value of the property and does not pay any tax on the appreciation when he or she sells.
- Additionally all of the gains of appreciation in the property can be passed on to their loved ones by devising the property to them in a revocable living trust.

3. Tenancy In Common (TIC):

The property is owned by two or more people either at the time of purchase or by the owner adding another person’s name. The primary difference between Tenancy in Common and JT and CP above is that there is no “right of survivorship” at the death of the first owner. Upon the death of the first Tenant in Common, the other tenant in common continues

on to your loved ones seamlessly.

to own ONLY his/her own percentage interest in the property.

Consequences:

- Each owner can devise their percentage interest in the property to their loved ones in their Will or Revocable Living Trust.
- The portion of the property being inherited can still receive the “stepped up basis” in the property by whoever inherits it. They will only pay capital gains taxes on sale if the property sells for more than its appraised value on the date of death of the owner.
- Creditors of each owner is restricted to only the percentage interest of the debtor/owner in the property.
- There may also be transfer taxes payable at the local level (City and County), upon transfer due to the “change in ownership.” Those taxes may or may not be exempt depending on the circumstances.
- The portion of the property owned by the deceased person still passes through probate if not devised in a trust or outright gift to the recipient.

4. TODD: Transfer on Death Deed – New in California

Since January 1, 2016, this new method of property transfer in California allows you to transfer real property to a beneficiary by avoiding probate or use of a living trust. It simply requires you to create a deed that names a beneficiary who will receive the property at death, notarize and record the deed in the County where the property is located.

However it is limited to:

- Single-family home or condominium unit
- Single-family residence on agricultural property of 40 acres or less
- A residence with no more than four

residential dwelling units

Consequences:

- The property does not go through probate at the death of the owner. The named beneficiary becomes the new owner immediately.
- The owner is not exposed to the creditors of the beneficiary named on the deed as it is with a Tenant in Common discussed above.
- The owner can revoke/cancel or modify the TODD during her/his lifetime.
- The property will still be subject to Medi-Cal liens if the owner was on Medical during their lifetime.
- The property will still go through probate at death of the owner if the named beneficiary dies before the owner and the owner has not devised that property by any other estate planning method such as a Will or Living Trust.
- The named beneficiary is FULLY responsible for the debts of the owner when the owner dies up to the value of the property that she/he receives.

Share the news!

Share Forward Share

About Endy:
Endy is an Oakland (Jack London Square) based Tax & Estate Planning Attorney with over 16 years of experience. He has helped countless families throughout California develop individualized estate plans and has administered many estates over that period.

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