MARYLAND COOPERATIVE EXTENSION
UNIVERSITY OF MARYLAND
COLLEGE PARK•EASTERN SHORE

Fact Sheet

Fact Sheet 410

Estate Planning

Owning and Transferring Property

Your ownership of property—personal or real—determines what you can do with the property while you are living and what may happen to it when you die. Your proof of ownership of personal property may be a title, a certificate, a receipt, a canceled check or another document.

Your recorded deed is legal proof that you own real estate. A deed must be recorded in the Registrar of Deeds Office in the county where the land is located. To record the deed, the person (grantor) from whom you received the land must declare having delivered the deed. You should get a lawyer's help when transferring a deed.

Ways to Own Property

You may have **sole ownership** of property, that is, full title in your name only. If you are sole owner, you may sell, mortgage, or give your property while you live, and will it when you die.

You may have a **life estate** in a home, farm, land, rental or other property without having title to it. You may use such property or get income from it as long as you live, but you may not mortgage, sell or will it to others. When you die, the remaindermen (children, relatives, charity, or other) receive the property with the right to give, sell, or will it to others.

You may have **co-ownership** if you and one or more persons have a legal title to an undivided interest in property. Co-owners do not have separate rights to a given part of land, a building, or bank account. Two common kinds of co-ownership are tenancy in common and joint tenancy with right of survivorship.

As a **tenant in common**, you have an undivided interest in the same property

with one or more persons. Courts usually assume this form of ownership exists unless the deed or title carefully states otherwise.

Neither you nor the other tenant (co-owner) have a right to the property through the death of the other. Each of you can sell or will your share, or force a sale to receive your share of the property. You may become a tenant in common when you buy, inherit, or receive property as a gift.

As a **joint tenant with right of survivorship**, you have an undivided interest in the same property with one or more persons, married or not. When you die, your interest in the property reverts to the other joint tenant(s). Therefore, the property held in joint tenancy with right of survivorship cannot be willed. In Maryland, your interest may be sold without the consent of the other tenant(s). In this event, the property would be held as tenancy in common, and you have forced a sale to receive your share.

Tenancy-by-the-entirety is a form of ownership that is limited to married couples. The survivor gets the entire estate upon the death of the other spouse. It differs from joint tenancy with right to survivorship in that neither party can dispose of his or her share of property unless the other agrees. In Maryland, a tenancy-by-the-entirety is assumed between married couples when the title reads joint tenancy with right of survivorship.

Ways to Transfer What You Own

You may transfer your property to others by such commonly used methods as gift, sale, joint tenancy with right of survivorship, trusts, insurance, annuities, a will, or a combination of these. Consider the advantages and disadvantages of each method and discuss your thinking with your estate-planning advisors. Your advisors will help you select the method or methods that best suit your situation.

If you do not choose a method while you are living, your property will be transferred according to Maryland's law of descent and distribution when you die.

Gifts

A lifetime gift is an easy way to transfer property. This kind of transfer can mean some savings in taxes for both you and the donee. As you give, you reduce the size of your estate and ultimately reduce the administrative cost of handling your estate. Also, you may reduce the amount of Maryland inheritance taxes payable following death.

The same tax rate schedule is applied to a property transfer whether the transfer is made during your lifetime or after death.

The law also provides a unified tax credit for estate and gift taxes owed.

According to the federal law, you may give up to $10,000 during any one year to as many persons as you like without applying any of the unified tax credit allotment, provided you give each person a right to immediate possession of the property. As a married couple, you may give up to $20,000 per person, per year without using the tax credit.

If you should give a person property valued at more than $10,000 in a single year, the unified tax credit must be applied against taxes due on the amount exceeding $10,000.

Until the entire tax credit is used up, it may be spread over several years to cover the sum total of taxable gifts. When the taxes owed exceed the credit allowed, a gift tax must be paid. Any part of the unified tax credit not applied against lifetime gift taxes may be applied later against estate taxes. So keep accurate records of lifetime gifts that may affect estate taxes at a later date.

Married couples also can make unlimited gifts to one another during their lifetimes without incurring a tax liability. Gifts and the unlimited martial deduction greatly reduce the size of the estate that will be taxed at death.

Finally, a few words of caution regarding gifts and planned deductions. Give no more than you can truly afford. You may suffer real hardship in later years if you are overly generous with your estate.

Sale

A sale is a simple, direct way to transfer your home, farm, business, or other property to anyone, including a family member. Although you lose control of the property, you may gain other advantages from the sale.

If you sell for cash, you are free to reinvest or spend the money any way you like. If you sell for a small down payment with mortgage, you may receive income through mortgage payments for several years. You may even incur income tax benefits through such an arrangement.

You may find that a conditional sale with a contract for deed is your best way to sell real estate to a buyer with limited means. For instance, you may want a special person to buy your home, farm, or business, but that person does not have the money for an adequate down payment. After you and the would-be-buyer agree on the price, you may contract the delivery of title. Retain possession of the deed until specified conditions are met, such as paying one-third of the price.

Consult your estate-planning experts on alternate ways of selling and receiving payment of property.

Joint Tenancy with Right of Survivorship

Do not be misled into believing that all of your transfer problems end through joint tenancy with right of survivorship. True, your interest in the property ends when you die and your surviving joint tenant or tenants get your share. The property held in joint tenancy is not subject to probate. Your survivor or survivors gain control with a minimum time to clear the title and with the least administrative costs.

The survivor does not necessarily escape paying federal estate or state inheritance taxes when property is held with the right of survivorship. If the joint tenants are not husband and wife, the entire value of the property is included in the taxable estate of the first to die **except** to the extent that the survivor can prove that part of the purchase price of the property was paid for by the survivor from funds gained independently of the decedent (the deceased), such as money inherited, earned, or received as a gift.

Married couples who own property jointly either as joint tenants with right of survivorship or as tenants by the entirety are presumed to own the property equally regardless of who put up the money for the purchase. This means only half of the property will be taxed in the estate of the first person to die. If everything is left to the surviving spouse, there should be no tax due. However, this change becomes important when the survivor sells the property because the survivor gets a stepped-up cost basis of one-half rather than all the property, thereby reducing capital gains taxes. Should the property in question be a family farm or other closely held business, legal and tax advice should be sought because there are significant laws affecting tax treatment of such property.

Jointly owned property has several outstanding disadvantages. One disadvantage is that you lose sole control of real estate once you put the property in joint tenancy. You may find it impractical to own all property jointly. For example, you may want sole ownership of your jewelry.

Finally, planning to transfer one's entire estate by joint tenancy with right of survivorship is not likely to dispose of all property satisfactorily and additional ways should be considered. For example, if joint owners die in a single accident, the property would be transferred according to the laws of Maryland's descent and distribution unless an alternate provision was made.

Trusts

A trust is a device whereby you transfer the title to property to a trustee (corporation, trust department in a bank, or persons) for

the benefit of yourself or others. You can make your own rules on how your trust will operate so long as you stay within Maryland law. You can determine the amount and kind of property of the trust, the number of years the trust will operate, who will receive benefits, how much, how often, and the condition under which the benefits will occur.

The two kinds of trusts are **living** and **testamentary**. The living trust becomes effective during your (the trustor's) lifetime and may continue in operation after your death if you wish. The testamentary trust becomes effective only upon the trustor's death.

You may use the living trust to minimize estate, inheritance or income taxes and to arrange a private transfer of your estate rather than transfer through probate. Either trust can provide professional managers for an estate. This relieves inexperienced, unqualified, or disinterested persons from the responsibility and worry of handling an estate.

A living trust may be revocable or irrevocable. The revocable trust allows you, the trustor, freedom to have someone else handle the estate without losing control of it. It lets you preview the management of your estate and adjust it if your situation or goals change. The revocable trust does not offer income tax advantages since you may change the operation of the trust at any time.

As the name implies, you may not change the terms of an irrevocable trust. You may gain income tax advantage from this kind of trust if you are in a high income bracket and do not have the trust income diverted to your legal dependents, applied to your debts, or reinvested for your personal benefit. You can provide the greatest flexibility in disposing of the estate by giving power of appointment to a primary beneficiary with a life estate.

You may reduce the amount of taxes on your estate by allowing one person to receive income from the trust (life estate) and a third party to receive the principal at a later date. Laws governing generation-skipping transfers are complicated and require professional advice. Ask a trust advisor to explain ways a trust may help you save on income and transfer taxes when making generation-skipping transfers.

You may wonder if your estate is large enough to consider putting it into a trust. Although some trust departments or companies will not take on the management of a small trust, they will manage one for you if it can be put into a large trust fund. Investigate the possibility of a trust before you make your final choice on how to transfer your estate.

You may find that a trust gives you great flexibility in disposing of your estate but set-

ting up a trust is too complicated for an inexperienced person to do alone. Seek the help of an expert.

Life Insurance

Life insurance may provide the ready cash needed to pay debts, cover taxes, and meet living expenses for your dependents while your estate is being settled. Your insurance proceeds pass outside probate if your policy is payable to a personal beneficiary rather than to your estate. When this happens, administrative costs in handling the estate are reduced.

You may choose the method of payment for your policy, such as all at one time (lump sum); life income to beneficiary with payments made monthly, quarterly or other; installment payment of principal plus interest on principal for a given period of time; installment payment for a guaranteed number of years but only as long as the beneficiary lives; or interest on the principal paid to the beneficiary with the remaining principal going to remaindermen.

Annuities

You may choose an annuity—commercial or private—if you want to be sure of income as long as you and your dependents live. Life insurance companies usually sell commercial annuities that may provide fixed and variable income or both.

If you—the annuitant—buy a fixed income annuity, you contract for a guaranteed amount of income beginning at a given age and continuing for a set number of years or for life. If you buy a variable income annuity, you will get a varying amount of income, depending on economic conditions and the stock market. A variable annuity offers some protection against inflation.

You may transfer other property, such as a farm, home, insurance or savings, into an annuity and choose how payments will provide your income. If you choose a straight life annuity, you will get income as long as you live but all payments end when you die. Nothing more is paid into your estate.

If you choose a refund annuity, not only do you receive income as long as you live, but your beneficiaries also are assured payment of an amount at least equal to the purchase price of your annuity. Thus, if you die soon after you begin receiving payments, it is likely that some income will be paid to your estate or personal beneficiary. A joint life and survivorship annuity provides income to both you and your coannuitant for as long as either lives. The manner in which payments are made may affect your estate taxes payment and should be investigated as a part of your property plans.

A private annuity may be arranged in a transfer of property, such as a farm or home, with a contract for a given annual income for the rest of your life.

Whether you buy a commercial or private annuity, study the contract before you accept or sign it. Be sure you understand the conditions of payment before you buy.

Wills

Your will allows you to keep control over your property while you live and to guide the court in distributing your property after you die. Even when you use other means of transferring property, you should still have a will.

One important reason for a will is the possibility that both you and your beneficiary might die from a common accident. Your will should state clearly what should happen in such an event. A common disaster clause in a will can avoid double probate with double expenses and double taxes when the decedents die in a single accident or one person briefly survives the other.

You can achieve the results you want through a properly drawn will. Although you may draw your own will, paying a lawyer to prevent errors and confusion may be wiser.

A properly drawn will permits you (the testator) to choose your beneficiaries, leave property to minors in the most suitable way, name guardians for minors, set your own rules for managing your estate, name your personal representative, and save on administrative costs.

Your will can and should be changed at any time to suit changed conditions. An outdated will can do real harm to those you want to protect.

Laws of Descent and Distribution

If you do not choose a suitable method for transferring your property, the law will do it for you after you die. The law is as fair and equal as possible but blind to individual needs. The law applies general principles on distributing property, naming guardians for minors, providing for the welfare of relatives, and managing estates.

If you would like more specific information on writing a will and on what happens to property if you die without a will in Maryland, request Fact Sheet 382, Writing Wills in Maryland from your local Maryland Cooperative Extension office.

Adapted from NE-166 *Richer Than You Think—Ways to Own and Transfer Your Property* written in West Virginia, for the Northeast Management/Consumer Committee, Northeast Publications.

Estate Planning—Owning and Transferring Property

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