INSIGHT ON ESTATE PLANNING

Should you place your home in a QPRT?

Planning is essential if you're inheriting assets

The long view of long-term care insurance

ESTATE PLANNING PITFALL

You haven't recently updated your powers of attorney

OCTOBER / NOVEMBER 2023

LEGACY PROTECTION LAWYERS, LLP

100 - 2nd Avenue South, Suite 900 • St. Petersburg, Florida 33701
T: 727.471.5868 F: 727.498.5696

www.LegacyProtectionLawyers.com

Should you place your home in a QPRT?

If you own your principal residence, you may be able to benefit from its build-up in equity, realize current tax breaks and pocket a sizeable tax-exempt gain when you sell it. What's more, from an estate planning perspective, it may be more beneficial to transfer ownership of your home to a qualified personal residence trust (QPRT).

Using a QPRT, you can avoid potential estate tax pitfalls without making drastic changes during your lifetime. Notably, you can continue to live in the home for the duration of the trust's term. When the term ends, the remainder interest passes to designated beneficiaries.

QPRT advantages

When you transfer a home to a QPRT, it's removed from your taxable estate. The transfer of the remainder interest is subject to gift tax, but tax resulting from this future gift is generally reasonable. The IRS uses the Section 7520 rate, which is updated monthly, to calculate the tax. For July 2023, the rate was 4.6%, down from the year's high of 5% in April.

You must appoint a trustee to manage the QPRT. Frequently, the grantor will act as the trustee. Alternatively, it can be another family member, friend or professional advisor.

Typically, the home being transferred to the QPRT is your principal residence. However, a QPRT may also be used for a second home, such as a vacation house. Also, the IRS will generally treat the land adjacent to a house as being part of the home as long as it's reasonable under the circumstances. The location, size and use of the home are determining factors.

What happens if you die before the end of the trust term? Then the home is included in your taxable estate. Although this defeats the intentions of the trust, your family is no worse off than it was before you created the QPRT.

There's no definitive period of time for the trust term, but the longer the term the smaller the value of the remainder interest for tax purposes. Avoid choosing a term longer than your life expectancy. Doing so will reduce the chance that the home will be included in your

Home sale exclusion put in jeopardy with a QPRT

If you transfer your principal residence to a qualified personal residence trust (QPRT), you may forfeit the home sale exclusion. With the exclusion, if you've owned and used a home as your principal residence for at least two of the five years prior to a sale, you can exclude from tax the first $250,000 of gain ($500,000 of gain if you're married and file jointly).

Can you claim the exclusion for a home in a QPRT? The short answer is, no. A QPRT is an entity and not an individual, thus it generally doesn't qualify for the exclusion.

estate should you die before the end of the term. If you sell the home during the term, you must reinvest the proceeds in another home that will be owned by the QPRT and subject to the same trust provisions.

So long as you live in the residence, you must continue to pay the monthly bills, including property taxes, maintenance and repair costs, and insurance. Because the QPRT is a grantor trust, you're entitled to deduct qualified expenses on your tax return within the usual limits.

QPRT drawbacks

Be aware of several potential disadvantages to using a QPRT. When the trust's term ends, the trust's beneficiaries become owners of the home, at which point you'll need to pay them a fair market rental if you want to continue to live there. Despite the fact that it may feel strange to have to pay rent to live in "your" home, at that point it's no longer your home. Further, paying rent actually coincides with the objective of shifting more assets to younger loved ones.

> *When you transfer a home to a QPRT, it's removed from your taxable estate.*

Note, also, that a QPRT is an irrevocable trust. In other words, you can't revise the trust or back out of the deal. The worst that can happen is you pay rent to your beneficiaries if you outlive the trust's term or the home reverts to your estate if you don't. Also, the beneficiaries will owe income tax on any rental income.

There are certain costs associated with a QPRT, including attorneys' fees, appraisal fees and title expenses. And you can't take out a mortgage on a home that's been transferred to a QPRT. (An existing mortgage is permitted, but it can complicate matters.)

Not right for everyone

A QPRT isn't for everyone, but it may be a beneficial estate planning strategy for certain individuals. Contact your estate planning advisor to determine if a QPRT is right for your estate plan. •

Planning is essential if you're inheriting assets

If you're in line to receive a significant inheritance, your feelings may range from exhilaration to relief, not to mention a great deal of sadness for the loved one who has passed. Indeed, a large infusion of cash or assets can be overwhelming.

Generally, when you receive an inheritance, there's no need to act quickly. Take some time to reflect on the significance of the inheritance on your financial situation. Also, consult with a team of trusted advisors (including an attorney, accountant, and financial advisor); and carefully review your options. These advisors will be invaluable as you form a plan to manage your newfound wealth. Let's look at several steps to take after learning that you'll be receiving an inheritance.

Determine the net proceeds

If your loved one's estate is still being administered, don't spend your inheritance — or make any financial commitments based on it — until you understand what your net proceeds from the estate will be. Once all fees and taxes are accounted for, the final settlement may be less than you expect.

If you're receiving your inheritance through a trust, talk to the trustee, familiarize yourself with the trust's terms, and be sure you understand the timing and amount of distributions and any conditions that must be satisfied to receive them.

Factor in any tax consequences

An inheritance generally isn't subject to income tax, but depending on the types of assets you inherit, they may have an impact on your tax situation going forward. For example, certain income-producing assets — such as real estate, an investment portfolio or a retirement plan — may increase, perhaps substantially, your taxable income.

If you inherit an IRA or a qualified retirement plan account, such as a 401(k) plan, be sure you understand the rules regarding distribution of those funds. The treatment of an inherited IRA or qualified retirement plan, such as a 401(k), depends in part on your relationship to the deceased. If you inherit an IRA or 401(k) from your spouse, you can usually roll the funds over into your own IRA and allow them to continue growing tax-deferred (or tax-free in the case of a Roth account) until you withdraw the funds in retirement.

Depending on the size of the inheritance, the additional money may also have an impact on your estate plan. If it increases the value of your estate to a point where estate taxes become a concern, talk to your advisor about strategies for reducing those taxes and preserving as much wealth as possible for your heirs.

Evaluate whether additional insurance coverage is required

After receiving a large inheritance, you may need to adjust your insurance coverage. For example, if you inherit real estate or valuable personal property, you may need to increase your property and casualty coverage.

In addition, because greater wealth makes you a more attractive target for lawsuits, you should consider purchasing an umbrella liability policy or increasing the coverage of an existing policy. You may also wish to purchase additional life insurance.

Assess how the inheritance will affect your financial plan

Treating an inheritance separately from your other assets may encourage impulsive, unplanned spending. A better approach is to integrate inherited assets into your overall financial plan.

Consider using some of the inheritance to pay down credit cards or other high-interest debt or to build an emergency fund. The rest should be available, along with your other assets, for funding your retirement, college expenses for your children, travel or other financial goals.

In addition, it's important to keep working. Few windfalls are large enough to see anyone through to retirement or death. Until you have a solid handle on the amount available after taxes and debt and have identified solid financial goals, you won't know if you can quit your job.

In addition, think about where you'd like to be five, 10 or 20 years into the future. Consider revising your financial plan to help you move toward your goals — whether that means retiring early, starting a business or something else.

Finally, be careful when asked for money. Friends and family members may expect to share in your bounty, and charitable organizations may ask for donations. The ability to support worthwhile causes or loved ones in need is a real benefit of a windfall. At the same time, if you accede to every request, you'll quickly deplete the funds.

Develop a plan

Inheriting a windfall can be a blessing, but without solid planning it could create income and estate tax issues. To help answer your questions, contact your estate planning advisors. They can help you address the inherited assets in your estate plan. •

The long view of long-term care insurance

What are the chances that you or someone in your family — perhaps an elderly parent — will need long-term care assistance? According to the U.S. Department of Health and Human Services, roughly 70% of Americans aged 65 or over will require some form of long-term care.

How will you pay for these services? A practical solution is to purchase a long-term care (LTC) insurance policy. With LTC insurance, you can reduce the possibility that your lifetime of savings will be drained by long-term care costs. However, be aware that this type of insurance has a few downsides.

ABCs of LTC insurance

Most LTC policies operate like some other forms of insurance that you're familiar with, such as homeowners or auto insurance. The policy's terms control the amount of benefits you receive on a daily or monthly basis, up to a stated lifetime maximum or number of years. This is predicated on the type of care being provided, for example, in-home care or a nursing home. You may be able to add to your coverage over time.

Typically, you're subject to a waiting period of 30 to 180 days before you're eligible for benefits (90 days is the norm). Generally, the shorter the waiting period the more expensive the policy. Similarly, you can expect to pay more for policies with higher maximum benefits.

LTC policies generally provide benefits when you can no longer perform several of the basic activities of daily living — including bathing, dressing, eating, transferring and managing incontinence — or if you're cognitively impaired. Once that occurs and you start receiving benefits, your premiums cease. However, if you stop paying on the policy first, you usually forfeit any future benefits. Note that coverage may be affected by several factors.

LTC policies generally provide benefits when you can no longer perform several of the basic activities of daily living.

For example, you may not qualify for coverage because of a preexisting condition.

Finally, recent trends regarding LTC insurance haven't been encouraging. After underestimating nursing home costs, insurers have reduced benefits, raised premiums or dropped out of the market altogether. As a result, policies generally are now pricier and more difficult to obtain. And for individuals who already have coverage, premium costs continue to go up, assuming the policy allows it.

3 factors to consider

Unlike homeowners and auto insurance, you typically have only one good shot at buying LTC insurance. Should you take the plunge, there are several key factors to consider, including your:

Financial situation. Do you have the wherewithal to pay for long-term care assistance on your own without jeopardizing your overall financial situation? Take an objective look at your entire financial picture.

Estate planning objectives. If preserving wealth to pass on to your family is a primary estate planning objective, an LTC policy may make sense.

Age and health. As you continue to age, the cost of LTC insurance premiums will increase. Also, you may have to pay more if you have preexisting conditions (if you can secure coverage at all). Apply for a policy as soon as possible and check for policies that are more lenient at a relatively reasonable cost.

There might be other ways of obtaining coverage without buying a policy privately. For instance, you may be able to participate in a group policy offered by your employer or from another affiliation. This can be especially helpful if health conditions would otherwise hike your premiums or deny you coverage.

Turn to your advisor

There is no one-size-fits-all LTC policy. With guidance from a professional advisor, assess your needs and make an informed decision about the LTC coverage that's right for your circumstances. •

ESTATE PLANNING PITFALL

You haven't recently updated your powers of attorney

Health care and financial powers of attorney are critical components of an effective estate plan. Indeed, while much of your estate plan focuses on actions that take place after your death, it's equally important to have a plan for making critical financial or medical decisions if you're unable to make them for yourself.

Health care powers of attorney, which sometimes go by other names, appoint a trusted person to make medical decisions on your behalf in the event an illness or injury renders you unconscious or otherwise incapacitated. Financial powers of attorney appoint someone to make financial decisions or execute transactions on your behalf under certain circumstances. For example, a power of attorney might authorize your agent to handle your affairs while you're out of the country or, in the case of a "durable" power of attorney, incapacitated.

After you've executed powers of attorney, it's important to review them periodically — at least every five years and preferably more frequently — and consider executing new ones. There are several reasons to do this:

- Your wishes may have changed.
- The agent you designated to act on your behalf may have died or otherwise become unavailable, or may no longer be appropriate.

- If you designated your spouse as your agent and later divorced, you probably want to designate someone else.
- If you've since moved to another state, your powers of attorney may no longer work the way you intended. Certain terms have different meanings in different states, and states don't all have the same procedural requirements. Some states, for example, require *durable* powers of attorney to be filed with the local county recorder or some other government agency.

Even if nothing has changed since you signed your powers of attorney, it's a good idea to sign new documents every few years. Because of liability concerns, some financial institutions and health care providers may be reluctant to honor powers of attorney that are more than a few years old.

LEGACY PROTECTION LAWYERS, LLP

10 YEARS
Founded 2013

We're Proud to Announce Our Newest Partner Nicole Bell Cleland

Florida Super Lawyers® Rising Star
2019-2022

Real Property, Probate and Trust Law Section of the Florida Bar Fellowship
2020-2022

Florida Association for Women Lawyers Leader in the Law
2020

Past Chairperson – Pinellas County Chapter Florida Association for Women Lawyers
2020– 2021

Board Member & Treasurer – Suncoast Estate Planning Council
2023

LegacyProtectionLawyers.com • 727.471.5868