

ESTATE PLANNING NEWSLETTER

TENANCY BY THE ENTIRETY TRUSTS

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Larry R. Bray
Attorney & Counselor at
Law

WISEMAN BRAY PLLC
8001 Centerview Pkwy, Ste. 103
Memphis, Tennessee 38018
901.372.5003 voice
901.383.6599 fax
lbray@wisemanbray.com

For more about estate planning
strategies as well as additional
information about other services
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It seems that each time we
send out a newsletter, we
have good news about trust
law in Tennessee. Tennes-
see has become one of the
leading jurisdictions for trust
law over the last several
years, especially as it relates
to asset protection. In our
last newsletter, we men-
tioned the improvements to
the Tennessee asset protec-
tion trust law. Effective July
1, 2014, we have a new
estate planning technique to
add to our repertoire: the
Tenancy by the Entirety
Trust.

In order to appreciate the
benefit of this new type of
trust, it is important to under-
stand the benefits of owning
property as tenants by the
entireties. In Tennessee and
many other states, when
husband and wife jointly
own real property, they own
it as tenants by the entirety
unless the deed specifies
otherwise. Tenancy by the
entirety is similar to joint
tenancy in that it carries with
it a right of survivorship,
meaning it passes to the
surviving spouse by opera-
tion of law at the death of
the first spouse to die. Unlike joint tenancy with a
right of survivorship, tenancy
by the entirety provides as-
set protection for the couple

from the creditors of only one
spouse as well as protection
for the surviving spouse from
creditors of the first spouse to
die. Property owned as ten-
ants by the entirety cannot be
reached by a creditor of one
spouse because each spouse
is deemed to own an indivisi-
ble interest in the entire prop-
erty.

Given the asset protection
involved with owning property
as tenants by the entirety, we
have historically advised our
married clients who have es-
tablished joint revocable living
trusts to leave the real prop-
erty, often the personal resi-
dence, out of the trust. If they
owned their residence as ten-
ants by the entirety, we often
did not recommend transfer-
ring the property to the joint
revocable trust because the
tenancy by the entirety would
be severed and the protection
would be lost. Thus, we had
to choose either to transfer
the property to the trust to
avoid probate or maintain the
asset protection.

The new statute eliminates
the need to make this choice
and gives us the best of both
worlds in many cases. It ex-
pressly provides for tenants by
the entirety property to be
transferred to a joint revoca-
ble living trust that is properly

drafted to maintain this ten-
ancy by the entirety protec-
tion. Therefore, we can trans-
fer the property to a joint revoc-
able living trust and get all
the benefits of a revocable
living trust, as well as the as-
set protection offered by ten-
ancy by the entirety owner-
ship. In order to get both
benefits, the property must be
owned as tenancy by the en-
tirety prior to transfer to the
trust, and the trust must be
properly drafted to comply
with the specific statutory
requirements. Therefore,
care must be taken to ensure
that the trust and the transfer
are properly handled.

For those of you who have
joint revocable living trusts,
we can amend your existing
trust to comply with the new
statute to make it a tenancy
by the entirety trust and deed
your existing tenants by the
entirety property to the trust
for maximum benefit. For
those of you who do not have
revocable living trusts, we
would love the opportunity to
review your existing plan and
discuss the benefits of revoc-
able living trusts. While only
married couples can take
advantage of tenants by the
entirety ownership of property,
we have a lot of other great
options for asset protection
for both individuals and cou-
ples.

SHIFTING OUR PLANNING FOCUS DUE TO TAX LAW TRENDS

For the past several years, we have focused on the estate tax and ways to reduce and/or eliminate estate taxes. This focus was primarily a result of the high estate tax rates and the relatively low exemption amounts.

In recent years, we have seen a trend toward higher estate tax exemptions, increasing income tax rates and the imposition of the Medicare surtax. For many clients, this means that we are shifting our planning focus from estate tax

liability to income tax liability. This shift allows us to consider and plan for the income tax consequences of asset shifting to younger generations as we design an estate plan that is more tax-efficient.

Often, we can simplify the plan at the death of the first spouse to die because we no longer need to plan for estate tax liability. Also, we are incorporating additional provisions in shares for beneficiaries to allow the trustee to consider income tax basis, tax

bracket differences between older generations and younger beneficiaries, and other income tax consequences in making discretionary distributions to beneficiaries. We also have the option of community property trusts to maximize basis step-up for the next generation.

We welcome the opportunity to review your existing estate plan with you to determine if any of these adjustments could benefit your family.

WISEMAN BRAY WELCOMES CARLISLE DALE & ERIN SHEA

We would like to introduce the two newest members of our team at Wiseman Bray, **Carlisle Dale** and **Erin Shea**.

Carlisle graduated from the University of Memphis Cecil C. Humphreys School of Law, where he was a member of the Memphis Health Law & Policy Journal. Carlisle concentrates his practice in the areas of estate planning and post-death administration, as well as asset protection planning and charitable planned giving.

Erin joined us earlier this year from another law firm, where she gained extensive experience in civil litigation. She practices in the areas of personal injury, wrongful death, premises liability and contract disputes. Erin also frequently works with governmental entities both in litigation and day-to-day management of various legal issues. Erin graduated *magna cum laude* from University of Memphis Cecil C. Humphreys School of Law in 2004.

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Lang Wiseman
**Attorney & Counselor at
Law**

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Chris Patterson
**Attorney & Counselor at
Law**

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Lindsay A. Jones
**Attorney & Counselor at
Law**

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