

ESTATE PLANNING NEWSLETTER

TENANCY BY THE ENTIRETY TRUSTS

INSIDE THIS ISSUE:

Tenancy by the Entirety Trusts 1

Shifting Our Planning Focus 2



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 provided by our firm:

Please visit our website at http://www.wisemanbray.com

Please follow us on Twitter at http://twitter.com/wisemanbray

Join our Facebook Group at http://facebook.wisemanbray.com

It seems that each time we send out a newsletter, we have good news about trust law in Tennessee. Tennessee 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 mentioned the improvements to the Tennessee asset protection 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 understand 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 operation of law at the death of the first spouse to die. Unlike joint tenancy with a right of survivorship, tenancy by the entirety provides asset 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 tenants by the entirety cannot be reached by a creditor of one spouse because each spouse is deemed to own an indivisible interest in the entire property.

Given the asset protection involved with owning property as tenants by the entirety, we have historically advised our married clients who have established joint revocable living trusts to leave the real property, often the personal residence, out of the trust. If they owned their residence as tenants by the entirety, we often did not recommend transferring 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 expressly provides for tenants by the entirety property to be transferred to a joint revocable living trust that is properly

drafted to maintain this tenancy by the entirety protection. Therefore, we can transfer the property to a joint revocable living trust and get all the benefits of a revocable living trust, as well as the asset protection offered by tenancy by the entirety ownership. In order to get both benefits, the property must be owned as tenancy by the entirety 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 revocable 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 couples.

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.

Disclaimer We are obligated by ethical rules to state that this Newsletter is an advertisement. Certifications of Specialization are available to Tennessee lawyers in many areas of practice, including the areas of Civil Trial, Criminal Trial, Business Bankruptcy, Consumer Bankruptcy, Creditor's Rights, Medical Malpractice, Legal Malpractice, Accounting Malpractice, Elder Law, Estate Planning and Family Law. Listing of related or included practice areas in this Newsletter does not constitute or imply a representation of certification of specialization.

Pursuant to recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.



Lang Wiseman
**Attorney & Counselor at
Law**

Business & Commercial Litigation
Construction Disputes
Products Liability
Wrongful Death
Auto Accident
Medical & Legal Malpractice
Lien Disputes



Chris Patterson
**Attorney & Counselor at
Law**

Litigation
Construction Disputes
Local Government
Municipal Law
Auto Accident
Wrongful Death
Personal Injury



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

Estate Planning
Probate
Trust Administration
Business Planning