<u>ESTATE PLANNING AND JOINT OWNERSHIP</u>

By Neil R. Lubarsky, Esq.

There are many traps involved in the estate planning process. One of the worst estate tax traps is for a parent to own property jointly with children. It is generally unwise for individuals who are concerned with estate tax liability to own property jointly with children, regardless of whether the jointly owned property consists of real estate, bank accounts or securities. When a parent and a child own property jointly, the entire value of the jointly held property is, under most circumstances, included for tax purposes in the estate of the parent. A parent's purchase of property in the joint names of the parent and a child, or a parent's transfer of property into joint name with a child, will not result in removing any portion of the value of such property or any portion of the property's future appreciation from the taxable estate of the parent. For example, if a parent buys a condominium for $200,000 in cash and puts the property in joint name with a child, and the parent dies when the jointly held condominium is worth $600,000; the full $600,000 date of death value of the condominium is included in the estate of the parent for tax purposes. Under most circumstances, the estate tax effects of owning property jointly with a child are the same as if the parent owned the entire property individually.

Changing the form of ownership of real estate, bank accounts or securities which have already been placed in the joint names of a parent and a child can have the effect of at least limiting if not reversing, the negative estate tax effects of such joint ownership. Whether property which is already owned jointly by a parent and a child should have its ownership changed, and if such ownership is to be changed, what the new form of ownership should be, is a matter which can only be determined through a thorough review of the joint owners' assets,

income tax brackets, ages, health status and personal relationships.

A second estate planning tax trap which also involves joint ownership is for spouses to own all of their property jointly with each other. Married individuals who own most or all of their property jointly with their spouses, and who have a combined taxable estate (roughly calculated by adding the value of a couple's assets to the death value of the couple's life insurance) in excess of $5,250,000 (or whatever happens to be the then current exemption amount), may end up having to pay substantial amounts of otherwise avoidable federal estate taxes as a result of owning such assets jointly with a spouse.

Although relatively new Treasury regulations have been issued which allow a spouse, under limited circumstances, to disclaim to a credit shelter trust the portion of jointly held property deemed to be owned by the first spouse to die, it is not safe to assume that your clients will always meet the stated requirements for making such a disclaimer.

In addition, if a surviving spouse has been granted a limited power of appointment over the assets contained in the credit shelter trust (which limited power of appointment in most cases will consist of the power to determine which relatives ultimately receive the assets remaining in trust upon the surviving spouse’s death), such a surviving spouse may not, for tax purposes, legally disclaim any assets into such credit shelter trust.

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