

Qualified Spousal Trusts – Transfer Your Family Home Today

AUTHOR: BHAVIK PATEL

When we meet with families, we not only try to recommend a customized estate plan that incorporates all of their desires, but we then proceed to hound them to get all of their “homework” done once their plan is in place. After all, signing the documents is only the first step. An “unfunded” estate plan is about as worthless as only having one sock.

Although getting our clients to do their homework sometimes seems harder than teaching an old dog to do new tricks, we refuse to let our clients fail themselves. So, on the path of funding, we typically start with the house. Until relatively recently, we always recommended that a husband and wife transfer their house by beneficiary deed or transfer on death instrument (discussed in an earlier blog post), because we did not want to make an immediate transfer that would potentially ruin their tenancy by the entirety status (a special status for when husband and wife jointly own property that has advantageous creditor protection attributes). But, today many states are allowing for the use of Qualified Spousal Trusts.

A Qualified Spousal Trust is a trust (1) the settlors of which are husband and wife at the time of the creation of the trust; and (2) the terms of which provide that during their joint lives all property or interest in property held by the trustee are either: (a) held and administered in one trust for the benefit of both settlors, revocable by either or both while both are alive and each settlor having the right to receive income or principal for the joint lives of the settlors or (b) held and administered in 2 separate shares of one trust for the benefit of each settlor, revocable by each settlor regarding that settlor’s share and each having the right to receive income or principal.

In 2011, Missouri adopted Senate Bill No. 59. One of the changes incorporated by this Bill was the addition of the Qualified Spousal Trust statute (R.S.Mo. 456.026). This provision specifies what happens to certain tenancy by the entirety property when the property is transferred to a qualified spousal trust.

If the property is transferred to the trustee of a qualified spousal trust, the property will have the same immunity from the separate creditors of the husband and wife that would have existed if the husband and wife had not transferred the property to the trust. Without such a trust, a husband and wife will forego the protections allowed by owning property as tenants by the entirety if they decide to simply transfer the property to a trust that does not qualify as a Qualified Spousal Trust.

With the enactment of this statute, the Qualified Spousal Trust provisions can be incorporated into the majority of families' estate plans today, and we can then transfer the family house immediately while preserving the protections. I don't know about you, but we are all for making the homework cleaner, simpler and essentially fool proof. Once the Qualified Spousal Trust is in place, a simple transfer of the home by recorded deed marks the end of the first leg on the path of funding.

Because Missouri allows for transfers of real property upon death by beneficiary deed, however, it is necessary for each individual to discuss whether a Qualified Spousal Trust is appropriate.