

Real Estate View

Presented by **Deb Egelske**, Broker Associate, Coldwell Banker.
Real Estate. Distinctively Different.



(REAL) ESTATE PLANNING PITFALLS Daniel P. Kapsak, ESQ.

When you are ready to sign your contract and deed, how will you take title to your new property? Do you know how you wish to hold title to the property? Do you know whom to ask if you don't know? Do you presume you will hold it in joint tenancy? Tenancy in common? Tenancy by the entirety? Community property? A trust or other entity? What difference does all this make, anyway? And, what does this all have to do with estate planning?

Estate planning, simply stated, is insuring that your voice is heard, your dignity honored, and your wishes followed regarding the disposition of your estate. However, as a sage once put it, "You can't plan for property you don't own." This is no more apparent than with property titling. How you take title will impact how your property will pass upon your death, and to what degree of control you will have over that passing. This article will briefly address some general issues regarding property ownership and estate planning.

There are many different forms of ownership, including fee simple, tenancy in common, joint tenancy, and life estate. (Those of you coming from California or any of the other community property states have your own unique set of problems and challenges following you to Colorado. Be sure to mention your "past lives" in community property states to your estate planning attorney—it makes a big difference in how your planning is done!) Each has its own distinct benefits and pitfalls; none should be used without appropriate legal counsel. Depending upon the type of ownership chosen, you may or may not be able to designate to

whom the property passes at your death; you may or may not be able to gift or freely transfer your interest during your lifetime; your interest in the property may pass to unintended heirs (or leave intended heirs out in the cold!); you may or may not benefit from a complete step-up in basis for tax purposes; and your interest in the property may be available to satisfy another person's creditors!

How you should take title will depend upon a number of considerations, including 1) the number of persons buying the property; 2) the value of the property; 3) the value of your estate; 4) estate and gift tax implications; 5) your ultimate intentions for the property; and 6) the ages of the persons taking title.

Whether or not you will reside in or rent the property also comes into play in how title should be taken. Properties owned as rentals or investments require more sophisticated forms of ownership using various types of business and estate planning entities such as limited liability companies, corporations, family limited partnerships, and trusts. Each has its own place in building upon your estate planning foundation, and requires careful thought and advice.

And selling investment property does not always need to result in capital gains tax liabilities. There are a number of options for deferring capital gains through "1031 exchanges" or "reverse exchanges." Charitable trust options also exist to allow you to remember the charities of your choice and avoid capital gains tax liabilities ... and possibly result in added benefits to you and your family.

Careful planning and counsel will help to insure that owning real estate will be a wonderfully rewarding experience. •

ABOUT DANIEL P. KAPSAK



Mr. Kapsak's practice is devoted to all aspects of estate planning, and has been published regionally on various aspects of estate and business planning. He is a member of the Boulder County Bar Association, the Colorado and Nebraska State Bars, and the American Bar Association. Mr. Kapsak is a member of the

Boulder County Estate Planning Council, the Colorado Health Ethics Forum, as well as the Tax, Probate and Trust Sections of the Colorado and Boulder Bar Associations. He serves as co-chairperson for the Ethics Committee for Longmont United Hospital, is chairperson of the Human Relations Commission for the City of Longmont, and is a member of the National Academy of Elder Law Attorneys (NAELA). Mr. Kapsak is principal of The Kapsak Law Firm, LLC, in Longmont, Colorado. Questions or comments may be directed to him at 303 651 9330, or dkapsak@kapsaklaw.com.



Deb Egelske,
Broker Associate
Coldwell Banker Residential
Brokers – Cherry Creek
101 University Boulevard,
Suite 100
Denver, CO 80206

Mobile: (303) 883-4500
Office: (303) 320-5733
deb@egelskeproperties.com



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