

## ***Ownership for Married Couples*** **Ten Years Into a Marriage**

By Casey Neuman, Esquire

Generally, after 10 or 15 years of marriage, the children have been born, the decision has been made whether the mother will return to the workforce, the couple has purchased the home in which they will raise their children, and the couple begins focusing on the issues of paying for their children's education and their own retirement. It is recommended that retirement savings should be a priority over savings for children's college education.

Now, assume that one spouse inherits \$250,000 from a grandparent. How should the investment of this money be titled? Should the investments be in the name of the spouse inheriting the money or in joint names? Should the monies be contributed to qualified college savings plans? Does it make a difference if the person inheriting the funds is the primary bread winner or a stay at home spouse?

Here the estate planner must carefully assess the strength of the marriage. Where the planner believes the marriage is enduring, a stay at home spouse with two children who have no prior college savings should invest \$110,000 each to two qualified college savings plans for the children, designating the inheriting spouse as the owner, and the other spouse as successor owner. The remaining investments should be titled in the name of the inheriting spouse. If the couple has been adequately funding qualified college savings plans since the birth of the children, a more modest sum, if any, may be contributed for that purpose. The inheritance should allow the couple to apply any savings from earnings after maximizing contributions to qualified retirement plans to be invested jointly.

A different conclusion would be reached where the earnings are already sufficient to maximize both retirement savings and contributions of \$11,000 per year to qualified college savings plan for each child. In that case, a strong argument can be made for the inheriting spouse to invest the money received in his or her own name with the working spouse using surplus savings to build a separate estate in order to maximize tax savings at the death of the survivor by each taking advantage of available exemptions.

In the case of a non-working spouse who receives the inheritance, there is a risk that, by fully funding a child's college education, the inheriting spouse may have relieved the other spouse from the legal obligation to contribute to the child's education in case of divorce. For example, assume the full cost of four years of college is \$25,000 per year or

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\$100,000. If the inheriting spouse, a wife, contributes \$110,000 to a college savings plan for a young child, she may well have fully funded the child's college education. Since that was a gift (a completed gift) from the parent to the child, the money in the college savings plan belongs to the child. Therefore, the inheriting (and non-working spouse) has relieved the working spouse of the obligation to educate that child. This can have significant impacts on the distribution of assets and child support obligations in the event that the spouses thereafter divorce. Additionally, since the non-working spouse has given away a substantial amount of money in contributing to the education of the child, the non-working spouse can be left without a significant nest egg if a divorce occurs.

Now, let us consider the case of a working spouse, a physician, who inherits the \$250,000. In Pennsylvania (where malpractice claims are on the increase and tort reform may not occur), it makes great sense for the working spouse to transfer \$110,000 of the inheritance into a qualified college savings plan for each child and to transfer the balance into joint names with the spouse. While this has the same risk described above in the event of divorce (e.g., giving up money and fulfilling a spouse's support obligation), it has a very valuable attribute of protecting the assets from a malpractice claim. In our example, assets given to the children via the funding of the qualified savings plans, no longer belong to the physician/parent. Rather, they belong to the child, so the assets are not subject to the claims against the parent. Additionally, when assets are titled in the joint names of a husband and wife, they are generally not subject to the claims of a creditor of one of the spouses alone. Therefore, the transfer into joint names insulates the assets from a malpractice claim, while still allowing both spouses to enjoy the property.