



## *Ownership for Married Couples* **The Golden Years**

By Casey Neuman, Esquire

For those married couples who have been blessed with good health and longevity, how they own or title their assets has a major impact in four areas. First, the federal estate and Pennsylvania inheritance taxes, federal income taxes, administration expenses, and investment decisions.

Today each of us can leave an estate of up to \$2 million free of federal estate tax. That figure is scheduled to increase to \$3.5 million in 2009. The federal estate tax is then suspended entirely for the year 2010, only to be reinstated in 2011 as the law existed in 2001, meaning that the exemption will drop to \$1 million adjusted for inflation. Of course, the amount exempt is reduced by any taxable gifts (those in excess of annual exclusions).

From a federal estate tax standpoint, if both spouses are in reasonably good health and if the combined assets are unlikely to exceed \$2 million at the death of the survivor, we recommend holding all non-IRA assets in joint names as tenants by the entireties. In such a case, upon the death of the first spouse, all assets would pass tax free to the surviving spouse by operation of law or by designation of beneficiary while minimizing administration costs at the first death.

If the combined assets of the couple exceed \$2 million, we suggest separate ownership of approximately half of the non-IRA assets in order to take advantage of the available exemptions at the death of the first spouse. The assets will be left in trust for the survivor but will not be taxed at the survivor's death.

For the wealthier couple, those whose combined assets exceed \$4 million, we recommend that each hold approximately \$2 million of assets, including IRAs, in their separate names, while holding the balance of their assets in their joint names. Here again, the separate estate of the first to die may be left in trust for the survivor in a trust that will not be subject to federal tax at either death.

But what if one member is in poor health? Take, for example, the case of a couple in their late 80s where the husband was recently diagnosed with Parkinson's. In such a case, it would make sense to rearrange assets so that common stocks or real estate investments with the greatest appreciation are titled in the name of the spouse who is expected to die first. Under present law, if death occurs prior to 2010, all assets included in the estate of the decedent will receive a step-up in basis equal to the fair market value of such assets for federal estate tax purposes.

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The advantage of obtaining a step-up in basis at death will generally outweigh the small additional administrative costs that may be incurred. Depending again upon the size of the holdings, we would want the first \$2 million of appreciated assets to be titled in the name of the ill spouse. While transfers between spouses are free of gift tax, transfers made within one year of death will not be recognized for purposes of stepping-up the tax basis at death.

In estates where it is unlikely that the appreciated property would be liquidated, it may make more sense to continue to own the property in joint names, thus, minimizing the administrative costs. Take, for example, the case where the elderly couple owns real estate leased to the family business, while a step-up in basis would allow the improvements to be re-depreciated over an extended period, the income tax savings may not be worth the additional costs. This is particularly true where the survivor's life expectancy is also relatively short.

If, on the other hand, the investment real estate might be sold by the survivor, the step-up in basis can produce a valuable savings.

One would not want to transfer securities which have lost money since purchased to the ill spouse, as the tax lost would be wasted if such securities were held until death. Thus, it is important that the estate planner understand the relative health of both individuals, as well as the makeup of their holdings.