WILLS, TRUSTS & ESTATES: *Plain and Simple*

House Trusts – Using Your House to Transfer Wealth

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A qualified personal residence trust, or what estate planning lawyers call a "QPRT", is a trust in which you transfer your residence (frequently a vacation house used by you as a residence or sometimes a primary residence) to a trust and keep the right to live there for a certain number of years rent free. The number of years that you retain the right to live there is up to you. If you outlive the number of years you kept the right to live in the house, then the house can either stay in the trust for your children and grandchildren, or be transferred outright to them. If you do not outlive the number of years you retained the right to live there, then the house goes back into your estate so that you will control who gets the house; and the house is, once again, subject to estate tax in your estate. It's the same result as if you had never transferred the house to the QPRT in the first place.

Although a House Trust itself doesn't give you the legal right to live in the house for free after your retained use period ends, the House Trust can provide that the Trustee will rent the house to you for fair market rent for as long as you desire, including for the rest of your life. In essence, your payment of rent to the Trust is a tax free gift to the Trust and its beneficiaries (although the rent payments are income to the Trust).

At the time you transfer your house to a House Trust, you make a gift equal to the fair market value of the house less the value of your right to live in the house for the number of years you chose. The value of your retained right is determined by actuarial tables and interest rates published monthly by the IRS. The longer you keep the right to live in the house, the less the value of the gift you have made. The higher the interest rate, the more your retained right is worth, thus reducing the value of the gift subject to gift tax.

The main advantage of a House Trust is that it lets you transfer a residence to your children at a gift tax value that's a fraction of the house's fair market value. Furthermore, any appreciation of the house that occurs after the gift date will avoid estate and gift tax, if you outlive your retained term. While the IRS interest rates are at historical lows (which makes the use of a House Trust less attractive), the fair market value of many homes has declined rather dramatically, which may make it advantageous for you to create a House Trust. Your estate planning lawyer can "run the numbers" so you can decide whether a House Trust is advantageous for you.

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