



# McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

FALL/WINTER 2007

LEGAL UPDATE

VOLUME 4, NUMBER 2

## PROTECTING YOUR HOME

For many people, their home is their primary asset. There are many ways under the law to protect your home from creditors. One of the simplest ways is in the form of ownership. This article will discuss briefly three forms of ownership that may assist in asset protection: Tenancy by the Entirety, an Estate of Homestead, and Trusts.

Tenancy by the Entirety is a form of ownership which exists only between a husband and wife. It is created by conveying land to a husband and wife by Deed or by leaving property to them in a Will. It will protect the principal residence of a married couple from seizure or execution for debts of any size owed by one spouse. A Tenancy by the Entirety does not protect your home from debts you share jointly with your spouse, taxes, pre-existing debts and debts from "necessaries" furnished to either spouse or a family member.

An Estate of Homestead is an estate in land created by statute for the protection of a homeowner and his or her family from creditors. It will protect up to \$500,000 in equity of a home. A Homestead will protect spouses from joint creditors. A "homeowner" includes a sole owner, a joint tenant, a tenant by the entirety, or a tenant in common. A Homestead pertains only to a primary residence. Only one owner can acquire a "regular" Estate of Homestead for his or her family. In addition, there is another Estate of Homestead which may be claimed by a person 62 years of age or older or by a disabled person. An Estate of Homestead may be acquired by a declaration in the Deed at the time that the property is purchased, or in a separate signed, notarized statement if the property is already owned; the Deed or separate statement must be recorded in the Registry of Deeds. A Homestead does not protect against debts related to taxes, debts acquired before declaring the Homestead, mortgages or other debts contracted for the purchase of the home, or spousal or child support judgments.

Transferring your residence into a trust may also provide protection from creditors. In order for this to occur, trust documents and a deed must be drafted and recorded. By transferring your home into a trust, you will be relinquishing ownership and placing it in the hands of a Trustee. The variables to consider in deciding on a trust or the form of a trust are more involved than can be addressed in this article. Suffice it to say, trusts are useful for estate planning and often offer tax benefits.

Frequently, use of a combination of the above forms of ownership will also provide benefits to a homeowner. For example, a married couple may own their home as Tenants by the Entirety and one spouse may also declare a Homestead and receive the benefits of both forms of ownership. Another option is to retain a life estate in your home and transfer the remainder interest to a Trust. In doing so, you can be afforded the benefits of a Tenant by the Entirety, have an Estate of Homestead, and protect the remainder interest from your heirs' creditors.

In protecting your home, there are many options and considerations. Let the attorneys at McCormick, Murtagh & Marcus assist you in planning these matters.



William Cullen Bryant House

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- Residential Real Estate
- Commercial Real Estate
- Business & Corporate Law
- Municipal Law
- Estate Planning
- Land Use, Zoning & Permitting
- Labor Relations
- Employment Law
- Litigation
- Landlord/Tenant Law



**Have you reviewed your Estate Plan Lately?**



**PAYING FOR EDUCATION EXPENSES**

Education expenses have soared over the past several years. According to collegeboard.com, the 2007-2008 average cost of tuition, fees and room and board at a private United States College was \$32,307, 5.9% higher than the previous year. The rising cost of education has led many to seek ways to help friends and family meet these obligations with minimal tax consequences.

A variety of options exist to pay another individual's education expenses including direct gifts, tax advantaged education savings plans and trusts. Regardless of which option you choose, careful attention should be paid to potential gift tax and generation skipping transfer tax issues which may arise.

Custodial Accounts under Uniform Transfer to Minor's Act.

One of the most common ways to help a child save and pay for education expenses is through gifts to a custodial account for the benefit of the child under a Uniform Transfer to Minor's Act. This act provides a mechanism for accounts that are beneficially owned by a minor but controlled by a custodian until the minor attains age 21. Transfers to these accounts are treated as completed gifts for gift tax purposes and so qualify for the \$12,000 gift tax annual exclusion. These accounts are flexible and assets can be used for education expenses or for other purposes the custodian deems to be in the child's best interest. One drawback to the account, however, is that the child is given absolute control over the account when he or she attains the age of 21.

Direct Payment of Tuition.

Payments for certain education expenses are exempt from gift tax. These non-taxable gifts are an excellent way to provide for the student with a minimal tax effect on the donor. To qualify for this exception, education expenses must be paid directly to the educational institution and must be for tuition only. Education expenses do not apply for payments towards room and board or other ancillary costs of college (i.e. books, supplies, etc.) nor does it apply to expenses paid by the student to the institution and later reimbursed by the donor. These exemptions only apply to qualified education organizations which may include primary, secondary, preparatory and high school as well as colleges and universities. Pre-primary school organizations are not qualified.

Qualified Tuition Programs, Section 529 Plans.

Section 529 of the Internal Revenue Code authorizes accounts to pay for higher education costs commonly referred to as Qualified Tuition Programs or 529 Plans. Contributions to a 529 Plan are treated as completed gifts for tax purposes and qualify for the \$12,000 gift tax exclusion. 529 plans provide excellent tax saving opportunities because the gains from the accounts are not subject to income tax upon distribution if used for a qualified higher education expense. Qualified education expenses include tuition, fees, books and supplies, and equipment. Qualified expenses also include room and board expenses within prescribed limitations. Additionally, the regulations allow a contribution in an amount equal to five times the annual exclusion. Currently this allows a contribution of up to \$60,000.00. However, a contribution of the full amount of \$60,000 would utilize the gift tax exclusion for the beneficiary for a five-year period.

Trusts.

Trusts can be individually designed to address virtually any situation but it is not uncommon to establish a trust as a vehicle to save for a child's education. Section 2503(c) Trusts and Health and Education Exclusion Trusts are two types of trusts that allow donors to effectively save for the beneficiary's education.

With proper planning it is possible to assist in the payment of the rising cost of education for a loved one and gain tax advantages for yourself in doing so.



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**Practice Areas**

- Litigation
- Estate Planning
- Estate Administration &
- Probate Law
- Employment Law
- Residential Real Estate



**Has your Corporation or Limited Liability Company filed its annual report with the Commonwealth of Massachusetts?**



## HOW TO CHOOSE THE RIGHT BUSINESS ENTITY FOR YOUR NEW BUSINESS

Upon starting a new business venture, one of the first steps you must take is to determine the legal structure of your business. Deciding on the most appropriate form requires careful consideration of both present and future business needs. This is an excellent time to seek the advice of a business or tax professional, an accountant and/or a lawyer.

Each type of business entity has its own advantages and disadvantages, which should be taken into careful consideration. Your business entity can be incorporated (C-corporation, Subchapter S-corporation), or unincorporated (Sole Proprietorship, General Partnership, Limited Partnership); or it can be an "LLC" (Limited Liability Company) or an "LLP" (Limited Liability Partnership). When deciding what entity is best for you 3 primary factors need to be considered; liability, taxation and record keeping and on going administration;

*Legal liability.* To what extent does the owner need to be insulated from legal liability? It is important to protect yourself and other owners from personal liability for potential losses associated with the business. You need to consider whether your business lends itself to potential liability and, if so, if you can personally afford the risk of that liability

*Tax implications.* Based on the individual situation and goals of the business owner, what are the opportunities to minimize taxation? There are many more tax options available to corporations than to proprietorships or partnerships.

*Cost of formation and ongoing administration.* Tax advantages, however, may not offer enough benefits to offset other costs of conducting business as a corporation including higher start up costs, annual filings and complex ongoing record keeping and administration costs.

*Flexibility.* You should maximize the flexibility of the ownership structure by considering the unique needs of the business as well as the personal needs of the owner or owners. Individual needs are a critical consideration. No two business situations will be the same, particularly when multiple owners are involved. No two people will have the same goals, concerns or personal financial situations.

*Future needs.* When you're first starting out in business, it's not uncommon to be "caught up in the moment." You're consumed with getting the business off the ground and usually aren't thinking of what the business might look like five or ten-let alone thirty years down the road. What will happen to the business after you die? What if, after a few years, you decide to sell your part of a business partnership? The bottom line? Don't take this very important decision lightly, and don't make a choice based on what somebody else has done. Carefully consider the unique needs of your business and its owners, and seek expert advice, before settling on a particular business format.



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#### Practice Areas

Residential Real Estate  
Commercial Real Estate  
Business & Corporate Law  
Elder Law  
Estate Planning  
Estate Administration &  
Probate Law  
Municipal Law  
Land Use, Zoning &  
Permitting  
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## IS YOUR FAMILY PREPARED FOR EMERGENCIES?

Whether you are a baby boomer with aging parents or you are sending your adult child away to college, does your family have the proper documents in place in the event of a medical emergency?

If your aging parents or adult children do not have a Health Care Proxy in place with appropriate HIPAA (Health Insurance Portability & Accountability Act of 1996) language designating you as their Health Agent, not only will you not be able to make health decisions on their behalf if they are unable to make their own, but due to privacy issues a hospital or health care provider (including college infirmary) by law, will not share information with you regarding your loved one's condition. As you can imagine, being unprepared for emergency medical situations can cause a stressful situation to be much worse especially if you live far away from the hospital treating your loved one.



**Wishing you and your family a wonderful holiday season and a healthy and peaceful New Year**

**From the staff of McCormick, Murtagh & Marcus  
Ed, Kate, Michael, LuAnn, Nora, Susan,  
Darlene, Linda, Cheryl and Leana**



