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## Are You Contemplating the Sale of Property in a Trust?

Every year we receive telephone calls from people who own property that is titled in a trust or are the trustees of trusts that own property. Often, they have either already sold the property or are contemplating its sale. The purpose of this article is to alert readers to the importance of understanding the trust *before* selling or transferring property - into or out of a trust. This is all about unintended consequences!

Trusts are established for reasons that we don't always think about, or remember, when we decide to sell our homes. For example, when real property is sold, the proceeds of the sale must be paid to the "owner." If your home is owned in a trust, when it is sold, the trustee or manager of the trust receives the proceeds of the sale. If your home has been trans-

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## This Story Has a Happy Ending

As you may recall, we discussed the proposed changes to the tax code in the second quarter edition of ***A Step Ahead***. The focus of that article was the significant change that was anticipated in the way that capital gains will be taxed. Under the current rules, capital gains are taxed when there is a taxable event. If an appreciated asset is sold, it is reported in the tax return for the year of sale and is subject to a capital gains tax. Under the current rule, upon the death of an owner, there is a step-up in basis. This means that any appreciation which occurs before the date of death is eliminated and any potential capital gains tax is based upon the fair market value as of the date of death of the decedent/owner. Of course, this is a significant benefit to beneficiaries of the decedent who avoid the capital gains tax on all of the appreciation earned during the decedent's lifetime.

The Biden administration's Build Back Better program contained a proposal that would capture the tax on appreciation on the mere transfer of the appreciated assets even if not sold. Under that scenario, gifts of appreciated assets to children or trusts would be considered taxable events and a capital gains tax would be imposed on the unrealized profit earned by the asset even though the asset was not liquidated. The program imposed a capital gains tax even if the asset was not transferred during the owner's lifetime. Under that scenario, a taxable event would be deemed to have occurred at the death of the owner of the appreci-

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## Questions to Ask Before a Senior Goes Home from the Hospital

Seniors face unique perils when they are hospitalized. Apart from the ever-present threat of Covid infection, delirium, functional decline and medication toxicity are some of the problems that more frequently affect seniors than younger patients. Upon discharge, many patients are overwhelmed by the information they are expected to digest including discharge instructions and follow-up appointments. Perhaps this explains why many seniors suffer re-hospitalization.

According to data collected by the Medicare Payment Advisory Commission, nearly one-in-five seniors discharged from the hospital will be readmitted within the first 30 days, often from preventable issues like premature discharge or discharge to an inappropriate setting. Re-hospitalization is both costly for facilities and debilitating on seniors who are often demoralized by repeated hospitalizations.

You can help seniors avoid readmission by keenly assessing their home environment. Ensure that

they have adequate support in place to follow medical orders and receive necessary follow-up outpatient care. To reduce the possibility that your loved one will be readmitted following a hospitalization, here are some suggestions:

### **Does the senior live alone?**

Seniors may require a high level of care for a period of time following hospitalization to move around in their homes, get in and out of bed, bathe, groom and dress, eat nutritiously and attend their follow-up medical appointments. Seniors who live alone may lack the support they need to recuperate safely. Before suggesting that your senior loved one be discharged to their home, consider whether someone is available to provide assistance and care that he or she may need. If not, perhaps professional in-home care services should be considered.

**Can the senior manage their medications?** Seniors are often discharged with a slew of new prescriptions, some of which may interfere with medications they have

been taking routinely. Seniors who take multiple medications may have difficulty adhering to their new medication regimen or may not recognize an adverse drug interaction. You can help by evaluating their current medication list, including new medications and over-the-counter drugs and supplements, helping to identify potential drug interactions, eliminating unnecessary or redundant medications and establishing a simplified medication schedule.

### **Will the senior be able to maintain a healthy diet?**

Senior nutrition is a serious issue. Eating poorly before or after discharge can put a senior at risk for falls. You can help seniors avoid this by talking with them about the number of meals they usually eat in a day, what they plan to eat at each of these meals, and how they will prepare meals once they get home. If it appears they will have trouble maintaining an adequate and nutritious diet, consider recommending an in-home care service provider to shop, cook and supervise intake of nutritious meals.

### **Does the senior have access to transportation?**

Obtaining follow-up care on schedule after a hospitalization is important to a successful recovery. It is possible to detect warning signs of health or recovery problems *before* they lead to re-hospitalization. Does your senior have the ability to drive to and from appointments or take public transportation? If they do not, help them secure assistance from family members or professional caregivers.

When seniors transition home successfully after a hospital stay, everyone wins.



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ferred into an *irrevocable trust*, you may have maintained a “life estate” in the home. This assures you the right to live there for the rest of your life — and the obligation to pay the costs and expenses of ownership. If you have a life estate, the value of the life estate, and of the “remainder interests” in the property (the interests of those who receive the property after your death) must be calculated *before the sale*. If this step is overlooked or incorrectly handled, the trust could be violated and the protection that was sought when the trust was established could be invalidated.

If you plan to sell your house, condominium or cooperative apartment which is titled in a trust, either revocable or irrevocable, and will purchase replacement property, it is important that the replacement property also be titled in the trust. Again, to do otherwise might undermine the goals you had expected to

accomplish when you established the trust.

If you own property in multiple states, upon your death, a probate proceeding will be necessary in each state. This is known as “ancillary probate.” To avoid the cost, expense and delay of ancillary probate, implement a trust and transfer these properties into the trust.

Finally, if you decide to transfer assets into a trust that you have implemented, before doing so it is important to confirm that the assets you wish to transfer can properly be

titled in a trust. A qualified retirement account, for instance, cannot be titled in a trust as this would constitute a “distribution” of the account and would cause the entire account to be taxed as income in the year of the transfer. Jointly owned property must also be carefully considered so as to ensure that any transfer to trust will be effective.

If you are considering transferring real or other property into a trust, please give us a call and Berwitz & DiTata LLP can discuss your options with you.



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ated assets, resulting in the imposition of a capital gains tax at death, thereby eliminating the step-up in basis. There were a number of other proposals included in that program which would have reduced the federal unified estate tax exclusion and altered other complicated rules that impact estate tax planning such as the grantor trust rules.

Needless to say, these proposals created a great deal of consternation in the estate planning community and among our clients. While not every client has a taxable estate, virtually everyone owns assets that have appreciated in value: their home(s), stock or other investments which have grown in value since the date they were first acquired.

Contributing to the apprehension caused by the proposed changes, on September 13, 2021, the Chairman of the House Ways and Means Committee, Richard Neil, introduced the

Committee’s proposed budget. The draft legislation included a reduction of the lifetime exemption from estate and gift tax from \$11 million to \$6.02 million per person, adjusted for inflation since 2011. The proposed legislation also included changes to the rules for grantor trusts created or funded after the date of enactment. Notably, the proposed legislation would not have impacted the step-up in basis at death for inherited assets as initially proposed by the Biden administration.

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In our earlier article, we expressed our skepticism that these proposals would be enacted. We opined that it was unlikely that any of these proposals would pass because the Democrats did not possess a sufficient majority in the Senate. As it turned out, these proposals were not shut down in the Senate. Rather, because the Democratic Party is so divided in the House, the Biden Build Back Better program was scaled back before even coming to the House floor — from \$3.5 trillion to \$1.75 trillion. As a result, the changes affecting es-

tate planning were eliminated in the version considered and passed by the House.

So, like the dream sequence in the final episode of *Newhart*, starring Bob Newhart, did all the hoopla regarding the changes actually occur? Well, yes to the hoopla, no to the results.

Although it is unlikely that there will be changes to the estate tax, grantor trust rules or capital gains taxation, at least this year, our clients should nevertheless be vigilant. You want to ensure that your estate plan is current and reflects your current wishes. Now is the time to contact us to review your estate plan. Do not hesitate to contact us so we can help you accomplish your goals.

### Have You Relocated? Do You Want to Keep Receiving This Newsletter?

If you have moved to a new home, either permanently or temporarily, please contact our office with your up-to-date address, telephone numbers, and e-mail addresses. We want to be sure that you will continue to receive communication from us.

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