

Ask the Probate Judge—Gifts & Joint Tenancy

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Q: The Albuquerque Journal, Business Outlook, published your article regarding gift taxes and exclusions. Are gifts made by the donor deductible on the donor's individual's tax form 1040, and if so, where? R.K.

Federal tax law allows you to make gifts of cash or other property worth \$12,000 or less per year to as many people as you wish without tax consequences. This is called the "annual gift tax exclusion." Spouses can give up to \$24,000 to each donee in 2008 with no tax consequences. If you limit the amount of your gifts to \$12,000 or less per person per year, the gifts would not be taxable.

Generally, gifts are not deductible on the donor's federal income tax return. However, if the gifts are made to qualifying charities, you can deduct the value of those gifts. Also, federal tax law specifically excludes gifts as income to the recipient. Except for income in respect of a decedent, a recipient of a gift does not usually have to report the gift on his or her income tax return.

If you gift more than \$12,000 to anyone in a year, you are supposed to file a U.S. Gift Tax Return, IRS Form 709. If gift taxes were due, the donor would typically be responsible for paying the gift tax. Contributions to qualified charities do not incur gift tax, even if greater than \$12,000.

IRS Publication 950, Introduction to Estate and Gift Taxes, provides more details. Visit www.irs.gov or call 1-800-829-3676 to obtain Publication 950.

Q: Does a house that is in joint tenancy have to register with the County Clerk to be sure that the house passes on death to the spouse? L.B.

I'm not sure I understand your question. If you mean "do you need to record a joint tenancy deed during the lifetime of both joint tenants?" the answer is "yes." Whenever anyone purchases or otherwise acquires real property, a deed is prepared with the legal description and names of the grantor(s) and grantee(s). The person who is selling or transferring the real property signs the deed in the presence of a notary public who notarizes the deed.

All deeds should be recorded in the office of the county clerk where the property is located. Recording the deed into the public record gives notice to all about how the house is titled. Recording a one-page deed with the county clerk should cost \$9.

In your example, the joint tenancy deed to your house should be recorded. Then when one spouse dies, the surviving spouse would record the deceased spouse's death certificate at the same county clerk's office. Recording the death certificate would have the effect of transferring legal title to the surviving spouse. When title companies searched for information about the house, they would find the joint tenancy deed and death certificate, which would tell them that the surviving spouse is the sole owner of the house.

Q: I read your article on out-of-state wills. Did you or will you answer the same on out-of-state living family trusts? Ours was made up in Arizona, and we moved here about a year ago. Thank you. R.D., Santa Fe

I have discussed this question in the past, but I am happy to recap. Trusts and wills are ambulatory, which means they are meant to move from state to state.

If your trust was created validly in Arizona, with the proper paperwork, signatures, witnesses (if required), and notarization, then it should work in any other state where you might live, including New Mexico.

Remember that once a trust is created, the trustor must transfer all assets into the name of the trustee of the trust. This includes land, houses, bank accounts, stock accounts, and other assets, no matter where located. If you have acquired a house or other assets within New Mexico, make sure those assets are titled in the name of the trustee of your trust.

Assets that have been transferred into the trust should pass without a court proceeding to the trust's beneficiaries after the trustor dies.

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