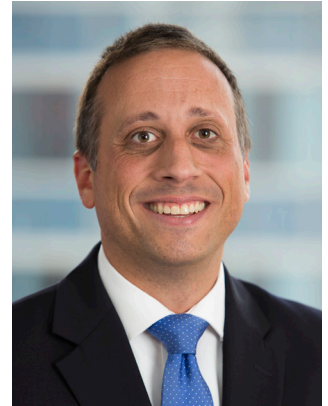


Home Ownership Myths

December 4, 2018

While the winter and holiday season may not be a busy time for the housing market, it is a good time for homeowners to pause and reflect how owning a home might affect their tax and estate planning situation. For many, a house is the most valuable and most important asset they own, so it is wise to consider some common myths and misconceptions surrounding home ownership.



Gregory J. Murphy

Myth 1: My spouse or children will automatically inherit my home when I die.

Not necessarily. How the title to the home is held determines whether the property will be subject to “probate” – the process by which a court confirms the recipients of the property on the death of the homeowner. If the house is owned by an individual, and that individual dies, the probate process is needed to determine the ownership of the property.

For married couples, two of the more common forms of ownership are (1) tenancy in common and (2) joint tenancy. The benefit of holding property as joint tenants is that on the death of the first spouse, the property completely vests in the survivor without the need for any probate court proceedings.

If the property is held as tenants in common, the survivor does not automatically take title to the home. Rather the decedent’s half interest becomes a probate asset and his or her will controls the disposition of that interest. If the decedent does not have a will, the Massachusetts intestacy law provides an order of assumed takers of the half interest. Similarly, following the death of the first spouse, a surviving spouse who takes title to the property under a joint tenancy now holds the home individually. Therefore, the property is a probate asset on the death of the surviving spouse.

Holding title to the home in a revocable trust or a special kind of trust called a nominee trust, or realty trust, will likely avoid the probate process, and can provide a mechanism for the disposition of the property on death.

Myth 2: Property taxes and mortgage interest that I pay on my home are deductible for income tax purposes.

Not necessarily. The Tax Cuts and Jobs Act of 2017 made a number of significant changes that might affect homeowners in 2018. First, the state and local income tax deduction was capped at \$10,000, meaning that your deduction for real estate taxes, state income taxes, personal property taxes, etc. may be limited. Many homeowners, especially those in Massachusetts cities and towns with high property taxes, will not receive a full tax benefit for all of the various taxes they paid in 2018.



Second, the rules for deducting interest on mortgages and home equity loans has changed. Mortgage interest on new mortgages in 2018 is deductible only on principal amounts up to \$750,000. Any mortgages in place before December 15, 2017 (and refinancings of those mortgages) are grandfathered in at the higher previous threshold of \$1,000,000. In addition, the deduction for home equity interest, which was previously available on home equity loans of up to \$100,000, is no longer valid. What’s more, there is no grandfathering of home equity loans in place before 2018.

Finally, the standard deduction nearly doubled for most taxpayers, to now \$12,000 for individuals and \$24,000 for married couples. This increase in the standard deduction combined with the \$10,000 limitation on state taxes and the potential reduction in deductible interest, will mean that many taxpayers who itemized in 2017 will take the standard deduction in 2018.

Myth 3: My home is protected from creditors.

Not necessarily. Massachusetts law automatically provides a homeowner with protection of up to \$125,000 of equity in the home from certain unsecured creditors. This means that a creditor cannot place a lien on the property or force the sale of the home if it is being used as a primary residence. However, this is often not enough, especially in a state with high home values like Massachusetts. Executing and recording a basic form, called a Declaration of Homestead, can increase this protection to \$500,000. It should be noted that this protection does not apply to certain debts, most notably federal, state, and local taxes, or to spousal and child support. Despite this limitation, the Declaration of Homestead is a simple and cost effective method to obtain protection against some creditors.

In addition, married couples have the benefit of a special type of joint tenancy called “tenancy by the entirety.” This type of ownership, like a joint tenancy, provides survivorship rights upon the death of the first spouse, but also prevents a creditor from forcing a spouse to sell the property for debts incurred by the other spouse. Although a creditor can place a lien on the property, the lien cannot be acted upon until after the death of the non-debtor spouse.

A homeowner should also review his or her insurance coverage to ensure that it is sufficient to cover accidents occurring on the property. Owning a home in a trust may offer additional protection against exposure, but not all trusts are created equal and are not appropriate in all circumstances.

It is important that every homeowner review the title to their property and their estate planning documents to ensure that their goals with respect to the property are met. In addition, on the death of a homeowner, certain actions must be taken in order to clear title to the home for the surviving spouse or other beneficiaries, which is crucial if the house will eventually be sold. Homeowners should also review their tax picture before the end of the year to determine whether any actions can be taken to reduce their income tax liability for 2018. Finally, homeowners should check their local Registry of Deeds determine whether they have recorded a Declaration of Homestead on their primary residence.

For those lucky enough to own properties in addition to a primary residence (vacation homes, rental properties, etc.), these issues can be even more complicated.

The attorneys in the [Trusts and Estates Practice Group](#) at Conn Kavanaugh Rosenthal Peisch and Ford, LLP have significant experience in dealing with the tax and estate tax implications of home ownership. Feel free to contact us if you have any questions on your particular situation. If you don't have time to discuss before the end of the year, make it a New Year's resolution!

