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Should divorcing couples sell their house?

Aside from child custody, the most emotionally charged issue in a divorce is usually who gets to keep the house. For most couples, a house is their most valuable asset, and it has an enormous symbolic value as well.

But while couples often fight over who gets the house, keeping the house isn't always the best plan, either legally or financially. In some cases, the better route is to jointly sell the property, split the proceeds, and then buy or rent a smaller home. Most people going through a divorce would be wise to at least consider this option.

As an example, let's say Jason and Elaine are getting divorced and deciding what to do about their house.

If Elaine wants to keep the property, Jason will almost certainly want to take his name off the mortgage – that's because he'll want to avoid any chance of being held legally liable for the debt. That means Elaine will have to refinance the mortgage in her own name.

So Elaine will have to consider whether she can afford the payments, and even whether she can obtain a mortgage based on her income alone. This could be difficult, because most banks have been legally required to adopt much tighter lending practices than they had before the financial crisis a few years ago. It could especially be a problem if Jason had a better credit history and was helping to raise the couple's credit score.

Perhaps Elaine is going to be receiving alimony or child support from Jason. Even if that's true, most banks won't consider these types of payments as part of a borrower's income unless the person has already been receiving them regularly for at least a year – and unless the divorce agreement requires them to continue for at least three years in the future.

Maybe Elaine was the primary breadwinner and will be paying alimony or child support to Jason. If so, she'll need to remember that most lending decisions are based on the ratio of the loan amount to disposable income – and her alimony and child support payments will significantly reduce her disposable income.

Jason might consider keeping his name on the mortgage at least temporarily if it means that Elaine can stay in the house and not have to sell it right away. This might be a good idea in order to avoid suddenly disrupting the children's routines, schooling and social lives, or if the house needs some updating in order to fetch a good sale price.

But this is risky, because if Elaine defaults on the mortgage payments, Jason could be on the hook. And even if Elaine makes all the payments on time, Jason's credit could still be affected because the loan amount will continue to appear on his credit reports.

Another thing Elaine will have to consider, beyond the mortgage, is the other costs of owning a home, including

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Employees' gifts and prizes can result in a tax bill

If a company gives bonuses, awards, gifts or prizes to employees or customers, there can be complicated tax consequences. It's important to understand these so you don't have an unpleasant surprise later.

In general, any gifts made by a company to an employee are considered wages. They're subject to both employment tax and income tax, and must be reported on an employee's W-2 form.

Certain very minor forms of compensation are usually considered "perks" rather than wages. For instance, if a business allows its employees use its copying machines for personal purposes for free, that's a perk. But if a business gives an employee cash (or a cash equivalent), that's always considered wages, even if the amount is minor. So if a worker gets a $10 Starbucks gift card as a thank-you for working late, the $10 is taxable.

Any time a worker gets cash or its equivalent, it's considered wages. So a $10 Starbucks gift card as a thank-you for working late is taxable.

Stock options are also taxable, and can be subject to complex rules. It's a good idea to learn these before you make any decisions about options.

One exception to the general rule is employee awards for safety or for length of service. Employees who receive tangible gifts (but not cash) as a result of such an award might be able to avoid paying income tax on the value of the gift – but again, there are strict and complex rules.

In theory, it's possible that a present from a company's owner to an employee could be a purely personal gift and not a form of compensation. But according to the U.S. Tax Court, you'd have to show that the present "is completely unrelated to the employment relationship and reflects no expectation of a business benefit." That's a tough thing to prove, and it seldom works.

Gifts to non-employees (vendors, suppliers, customers, etc.) are typically not taxable as income to the recipient. However, if a gift is large enough and related closely enough to business dealings, there might be an exception.

For instance, in one case the president of a metals company gave the president of another company some extremely valuable sales leads.

The other president responded by giving the first president a car.

The first president didn't report the value of the car as income, because he considered it a gift. But the U.S. Supreme Court ruled that the value of the car was subject to income tax because it wasn't really a gift; it was repayment for the sales leads and an inducement to provide additional information.

Family and Medical Leave law now covers gay marriage

The federal Family and Medical Leave Act allows many employees to take up to 12 weeks of unpaid leave to care for a spouse who has a serious medical condition. Recently, the U.S. Department of Labor approved a new rule saying that this includes spouses in same-sex marriages.

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It's important to note that this rule applies even in states that don't recognize same-sex marriage. According to the Department of Labor, a marriage is valid for FMLA purposes as long as it was performed in a state that recognizes same-sex marriage – even if the employee lives or works in a state that doesn't.

Therefore, business owners and managers may have to grant leave to employees to take care of a spouse even though the person isn't recognized as a spouse under state law.

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property taxes, homeowner's insurance, utilities, maintenance, and so on. These costs won't go down after a divorce, even though there will now be only one spouse contributing toward them.

If Elaine still decides to keep the house, and "buy out" Jason's share with other marital assets, she would be wise to treat this the same as any other real estate purchase – just as if she were buying the house from a stranger.

That means she should get an appraisal and be certain of the home's market value. She should also get the house inspected, and find out how long it will likely be before she has to repaint, repair the roof, fix the heating and air conditioning systems, etc. She should find out if there are any signs of termites or other problems, and arrange a title search for unexpected liens. After all, once she "buys" the house from Jason, she can't undo the sale later.

What you need to know if you're thinking of retiring abroad

The idea of retiring on a beach in Central America or in a quaint village in Europe might seem idyllic. But before you think seriously about retiring in another country, be sure you know all the tax and estate planning rules.

A lot of people have been tripped up by these rules in the past. For instance:

- If you keep more than $10,000 in a foreign bank account, you'll have to file annual reports with the U.S. government. And be sure you can even open a local account – a law passed by Congress a few years ago requires foreign banks to file detailed disclosures on accounts held by Americans, and many smaller foreign banks won't even accept Americans as account holders anymore because they don't want to deal with the paperwork.
- Some foreign countries don't allow non-citizens to directly own real estate. As a result, you'll have to own the real estate through a trust or a corporation, or have a local agent hold title while you contract with the agent to control the property. Owning real estate through a foreign trust or corporation can result in onerous tax and reporting requirements here in the U.S.
- Some people have the opposite problem: They want to own real estate through a trust or corporation for asset-protection purposes, but this isn't allowed by the foreign country.
- You might be subject to gift and estate taxes in both the U.S. and the foreign country. While you can sometimes get a credit on your U.S. federal taxes for any taxes you pay to a foreign country, this isn't always the case. And it can be even harder to get a credit if state estate taxes are owed.

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- Inheritance rules are very different in some countries, and sometimes foreign law will dictate what happens to your property in spite of what you put in your will. For instance, even if your will says that your real estate will go to your spouse, it could end up going to your children instead – or even to a distant relative.
- If you make gifts to foreign charities, you generally can't deduct them on your U.S. taxes.
- Finally, Medicare typically won't cover your health expenses in a foreign country, so you'll have to make other arrangements. And if you eventually return to the U.S. and you didn't pay Medicare Part B premiums while you were away, you might be subject to a penalty if you sign up for Part B coverage.

We welcome your referrals.
We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Sale of business interests can trigger surprise tax result

Did you know that if more than 50% of the interests in a partnership or LLC are transferred within a 12-month period, the business technically ceases to exist under federal tax law?

That's true even if the business continues to operate as normal for all other intents and purposes.

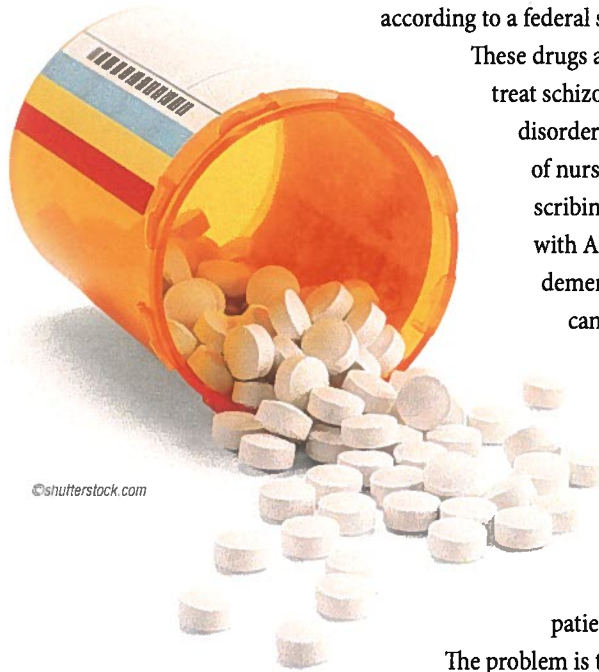
This "technical termination rule" is important. For one thing, a special tax return is due within a few months after the "termination" occurs. Recently, one family business was hit with more than $12,000 in IRS penalties and interest because the family didn't realize they needed to file such a return.

The partnership or LLC must also make new federal tax elections and start over with new depreciation periods – which can significantly reduce tax write-offs. And if the business operates on a fiscal year, the owners might end up having to report more than 12 months' worth of taxable income in the year the termination occurs.

A technical termination can happen even if partial sales occur in different calendar years. So if 25% of a business's interests are transferred in September 2015 and another 25% are transferred in July 2016, that still counts as a sale of 50% of the business in a year.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

Nursing homes may be overprescribing antipsychotic drugs



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More than 300,000 nursing home residents across the country are receiving antipsychotic medications, according to a federal study.

These drugs are typically used to treat schizophrenia and bipolar disorder. But a large number of nursing homes are prescribing them for residents with Alzheimer's disease or dementia. These patients can experience anxiety and aggression, and nursing homes sometimes prescribe them in order to calm the patient down.

The problem is that when these drugs are prescribed inappropriately, they can increase the risk of heart failure, infections, and other serious health problems.

Antipsychotic drugs have *not* been approved by the Food and Drug Administration to treat dementia. In addition, federal law prohibits using drugs simply to restrain nursing home residents, and requires nursing homes to get the consent of the resident or his or her personal representative before prescribing antipsychotics. So you might be able to bring legal action if a nursing home broke the rules and caused someone harm.

Some nursing homes have been known to seek "consent" by casually mentioning to family members that they plan to give the resident "something to calm them down," without fully explaining the seriousness of the drugs involved. It's a good idea to ask questions and get all the details about any new medications.