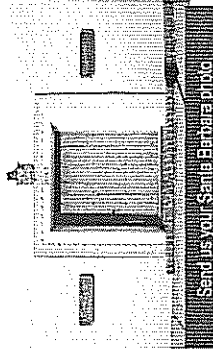


## Chris Jones Newsletter



Send us your Santa Barbara story!

Dear Friends,

In my last letter, I wrote about our community sticking together. Since that time, many people have mentioned to me how they are seeing our community in action. Many have been involved in helping people impacted by the fires. Others are getting out to more social events. Still others talked about spending more time with family.

Santa Barbara has a special sense of community and business support that makes it a great place to live.

—Chris Jones

## BUSINESS & REAL ESTATE

### BREAKFAST WITH CHRIS & CRISTI

Join us for a monthly breakfast with Santa Barbara business and real estate professionals. It's a great way to network and share ideas.

We decided to introduce a business networking and monthly breakfast to help Santa Barbara businesses and professionals help each other.

Our next Breakfast with Chris and Cristi will be held Friday, April 3 from 7:15 to 8:45 at the Canary Hotel. It is only \$20 and a full, hot breakfast is included.

We have all read and heard about the decline of real estate prices and sales. Over 20% of American real estate owners have property that is worth less than the outstanding debt on the property. In the meantime, the lending industry has become increasingly stringent, and fewer people qualify for loans, especially in our area. Unless you occupy real estate as your residence, a foreclosure or short sale will result in the lender sending you a 1099 form reporting the amount of the debt that was written off. You must include that debt forgiveness as part of your income for which you must pay income tax. All in all, this is a tough climate for investors.

Challenging times call for innovative solutions to real estate investments. Sellers may need to offer taking back a second trust deed, or propose lease options to potential buyers. Older owners may consider selling a remainder interest in the family home, that is keeping a life estate that allows them to continue to occupy the property so long as they choose. While marketing efforts are underway, the monthly payments are still due on time. What else might an owner consider to save their investment, and reduce the risk and costs associated with foreclosure? A viable strategy in the times of a faltering economy is the shared or co-ownership agreement. We increasingly see arrangements between parents and children, unmarried couples, or owners and investors who pool money to either buy or hold real estate. Using shared ownership arrangements lessens the likelihood of default by allocating the burdens and responsibilities among multiple owners, while using real estate to generate cash flow.

It is important to not only record a deed to reflect the shares of each owner, but also to prepare and sign a written co-ownership agreement. A written co-ownership agreement maximizes the odds of a successful relationship. It does so in two ways. First, it accurately documents the parties' understanding. The best time to decide what each person gives and receives, and when, is before any disagreements arise. Secondly, creating the

# THE FUTURE: SHARED OWNERSHIP OF REAL PROPERTY

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agreement means that the parties must think about and resolve issues they otherwise might not consider. What will we do if things do not turn out as we expected? Resolution is much easier before one has a stake in the outcome. Issues that should be dealt with in a co-ownership agreement include:

1. **Contributions:** How much will each party contribute to acquire the property, and to pay the on-going expenses? Since expenses include not only the mortgage, taxes, and in-

## ESTATE PLANNING: MORE CRITICAL THAN EVER

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We have all been battered by the economy. Perhaps that is the most common shared experience of the last year. We have lost equity in stocks, real estate, retirement accounts, and even savings accounts. Most people tell me that they have experienced a decline of 30 to 50 % of their investments in 2008. With news of bank failures, manipulation of the stock market, and the collapse of the mortgage lending industry, it appears that there is no place of refuge.

While we cannot entirely control the erosion of our investments, we can control the inevitable losses that come from the transfer of our wealth to future generations. Why is it then that people defer taking simple action so as to absolutely safeguard from erosion of their wealth by probate fees and estate taxes? Without proper planning, it is certain that your estate will suffer a loss of between 15 and 50% or more. This year, the federal estate tax exemption has been increased to \$3,500,000 per person. A married couple's living trust can save as much as \$1,575,000 in estate taxes when the second spouse dies. Wouldn't you rather see your assets in the hands of your family and heirs, rather than to the Internal Revenue Service?

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## FUTURE: SHARED OWNERSHIP OF REAL PROPERTY CON'T

urance, but also maintenance and repairs, they will likely include unexpected outlays. Although expenses are usually shared based on ownership percentages, problems often arise over who decides when expenses are incurred and for what purpose. What is the consequence if a party doesn't pay their share?

2. **Percentage Ownership:** Parties often assume that they are acquiring equal interests, regardless of how much each contributes. The interests are equal only if the owners so agree. A written agreement will clarify all parties' intentions before the money is spent.

3. **Termination/Transfer/Sale:** The most important issue is the "exit strategy," i.e. how to end the relationship and dispose of the property. Unless the parties restrict the right to sell or transfer an interest, any owner has the right to sell their interest to a stranger or demand sale of the entire property. This issue can be addressed with right of first refusal, sale upon predetermined events, such as a certain date, and buy out upon death. Without an agreement, the alternative is costly litigation.

4. **Management:** Typically the touchiest issue is the making of decisions about the ownership, use and operation of the property. Without a pre-arranged management structure, the simplest problems can lead to discord. The usual mechanisms to solve

management issues include granting one owner the authority to make decisions in his or her best judgment, or reaching consensus by a majority of owners.

5. **Possession:** Does one owner have exclusive use of the property? If co-owners occupy the property at the same time, how is the space allocated?

Most importantly, does the agreement give an owner the right to allow third parties to use the property, e.g., friends, roommates?

6. **Liability:** The parties should agree that an innocent owner will be indemnified by a negligent owner for wrongful acts. This gives protection in the event of third party claims or lawsuits. Without such a provision, the innocent suffer with the wrongdoers.

The best arrangement is one which is thoughtful and comprehensive. By addressing all possible contingencies before they come up, the parties can easily structure a neutral approach - one which meets each person's needs. Putting the agreement

in writing adds permanency to the arrangement, surviving the passage of time or substitution of parties. I don't know about you, but I find that documentation is more reliable than my memory!

## BENEFICIARIES. HAVE YOU BEEN TOLD THAT ...

- ◆ ... You are not allowed to know what is in the estate?
- ◆ ... You are not entitled to a copy of the trust?
- ◆ ... You must sign a waiver of your rights to an accounting?
- ◆ ... Your questions will delay distribution?
- ◆ ... Your share has been spent?

## KNOW YOUR RIGHTS

CALL US: 805 963-2014

## ESTATE PLANNING: MORE CRITICAL THAN EVER CON'T

### Your Wishes Carried Out

The surest way to have your wishes carried out is to put them in writing. Better yet, put them in a document that courts and financial institutions will recognize. Preferably use language that is familiar and recognizable by the courts.

The law says that property transfers at death must be contained in either a will or a trust. Otherwise, there is no legally enforceable way to carry out your wishes. I have had people tell me that they were leaving their property to someone with instructions as to how that person was to distribute it. If those instructions are not in a will or a trust, you should assume that the distribution will never happen as you intend. Moreover, your beneficiaries will not be able to do anything about it. By creating a will or trust, you can be assured that your desires will be fulfilled.

### Administrative costs

There are two types of costs associated with the administration of an estate. The first has to do with the fees incurred in court proceedings. The second has to do with taxes, including estate, gift and income taxes. Each of these costs is independent of the other. Since most people want to leave the maximum amount of their estate to their loved ones, the question is how to reduce these costs.

"Probate" is the court-supervised admini-

stration of a decedent's estate. Probate is generally required where the decedent's estate has a gross fair market value of \$100,000 or more, not including joint tenancy property, property being transferred to a spouse, property subject to trusts, or contractual benefits such as life insurance or retirement accounts for which there are beneficiaries. It does not matter whether the decedent did or did not create a Will, as probate is still required.

Under the best of circumstances, probate takes a minimum of 6 months. Both the start and completion require notices to interested parties and court hearings, and after the representative is appointed, at least 4 months must be allowed for creditors to present their claims against the estate. For the most part, your beneficiaries do not receive anything until the estate is closed. Your estate must pay fees to both an executor or administrator, and their attorney. Those fees are based upon the size of the estate, and start at \$8,000 for a \$100,000 estate. Recently, California increased the filing fees, and now impose that same fee on virtually every petition that gets filed in probate.

The best way to avoid the costs associated with probate proceeding is to create a trust. Unless there is a dispute, trusts are not subject to review by the courts. They are private, quick to administer, and the trustee's fees are typically less than half of the costs of probate.

The second kind of administrative expense is the tax owed to the federal government. In 2009, estate taxes are imposed on any estate in excess of three million five hundred thousand dollars in net value, and the taxes are 45% of the excess. In 2011, the exemption is scheduled to be reduced to

one million dollars.

Through the use of trusts and other estate planning devices, it is possible to avoid the burden of estate taxes so that your beneficiaries can receive your estate in a nearly intact condition.

With a little advance planning, all of your goals can be met, and your wishes will be carried out as you intended. Administrative costs and taxes will be eliminated or minimized.

Your beneficiaries will receive everything that you wish for them. You will have peace of mind. There is no substitute for preparation, planning and follow through!