

Courtside *Legal Update*

What is Transmutation in Estate Planning?



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When a married couple resides in the state of California, they have the option to accumulate “separate property”, “community property”, “quasi-community property”, or any combination of these three characterizations. If a person desires to change the character of a property, transmutation can be done to change the property ownership rights of the married persons.

Written Transmutation Agreements for Estate Planning

When constructing an estate plan that works for you, changing the ownership of property may be beneficial. For example, if a husband inherited property from his family, it might be desirable to convert ownership of that asset to “community property” within the marriage. Conversely, it might be favorable in a circumstance to transmute “community property” into the “separate property” of one spouse. It is always best to consult an experienced estate planning attorney so that these details can be properly executed.

Is Transmutation Necessary?

Generally, assets owned by a person before marriage, as well as those received by gift, will or bequest, are considered “separate property”. In California, assets acquired during a marriage are presumed to be owned equally and are therefore considered “community property”.

A person or couple might consider the advantages of transmutation if they wish to:

- Manage capital gains tax when a surviving spouse sells the property after the death of the other spouse

- Save for Medi-Cal planning purposes
- Reduce the likelihood of litigation after the death of the spouse
- Match the legal title of the asset to the true belief of the asset regarding the character of the property

Not only does transmutation affect the way assets are distributed in an estate plan, but transmutation can also be used in the instance of divorce. Whether in a marriage or part of a marriage dissolution, an estate planning attorney can help you understand the ramifications of asset characterizations.

Do you have questions about your assets or estate plans? Our team at Tyler & Bursch, LLP is here to assist. Contact us any time at our main office: (951) 600-2733, or our OC office: (714) 978-2060

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