

Chapter 4

Rethinking Ownership

The greatest deterrent to putting assets in an Irrevocable Trust is giving up control. This chapter gives you an entirely different perspective about ownership.

It Belongs to Me, Right?

Getting the goods of the world can be a wonderful experience. Further, strutting your stuff in ways ranging from subtle to blatant is considered proper, laudable, or even mandatory. Being the “Joneses” instead of trying to keep up with them is often our secret wish. It means being in control of your life, instead of at the mercy of others—or is it an illusion? Whether it be a shopping spree, a new car, or getting a mortgage for a home, the lust to have is considered normal—but is it?

There is a different way, to look at ownership. As a lawyer told us, “The only reason they let you have anything at all is so, if you do not obey, it can be taken away from you.” What? You do not believe it?

If you do not pay your income taxes you can lose your home, your car and anything else the IRS decides it wants to place a lien against. If you do not pay your county property taxes, your home disappears into the black hole of forfeiture. Homeowners live with the threat—constant reminder, that if they step out of line it will cost them. To lose their job, become involved in an unfortunate divorce, all their hard-earned equity in the property can be claimed by the ex-spouse, the bank, the state, or the IRS. You owned it. You lost it. In

fact, if you ask people around you about the state of affairs of their finances, you will probably discover some of them have lost “it” at one time or another.

Here is another hard truth. According to a friend of ours who became closely associated with an ex-judge, the judge told her, “People never own their home: that is why the state can take it when they do not pay their property taxes. Property only belongs to the state, never to the individual.” We would like to give you a footnote on that, but for the safety of the judge, we cannot. We quote it here though, because we have heard it several times, and even from a real estate agent we met at a spa while we were steaming in a mineral bath. In an astounding confession, she revealed this fact to several others in that hot pool. Some homeowners flatly did not believe her, and others were so shocked they fled from the pool in dismay.

A hint the statement is true is found in the definition of land held in allodial title, “Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal.”¹ Do you own your home in allodial title? No, you own it in fee simple.

Although these people who shared their knowledge about the true ownership status of property must remain unknown, we can send you to any law dictionary to look up the term “fee simple.” Property transferred in fee simple allows it to be inherited, not owned.

You may wonder what the mysterious difference is between allodial title and fee simple. By answering a few questions and learning some obscure history, you can more fully understand.

Do you want to pay for all the benefits of the county services? We mean, do you want to dig your own water well, supply your own electricity, provide your own fire and police protection? Probably not; therefore, when you elect to pay county taxes, you also forfeit full ownership of your property. Obviously, allodial title is not practical. Unless you are ultrarich, fee simple is for you.

This state-owned property fact is becoming more and more known, and if you ask around, it will be revealed to you by those who know.

Why Ownership Can Be Bad

Taking the responsibility to pay off a home loan, or to buy a car on installment payments, is something of which to be proud. We agree, except in the current

¹

Black’s Law Dictionary, Second Edition, 1910

corrupt climate of government and tax organizations, ownership could be a greater liability than most people realize.

The politically savvy kings of ancient times knew all about this. They bribed the ordinary person by offering him a title and some land if he served in the king's army. As a bonus, he would see exotic foreign countries and find hard-won glory in distant battles. There was always, though, that sly little royal trick. For a commoner, now a knight, to hold the land took an army, and without the strength to battle the raiding bands of encroaching nations, this new little fiefdom was doomed. Now that same honorable knight must ask the clever king for help to defend his tiny plot of land and his family. For that, he had to pay a price. Whatever the price was, it involved some pledge that enslaved him to both king and land, and that hard-earned title became tainted with a different noble slavery. The serf on the land may have had a better arrangement than the hapless knight—obligated, laden with responsibilities and political schemes that complicated his life.

Although this paints a dark picture, and is perhaps dramatic to make the point, ownership can be leverage others use against you. If you take this leverage out of the hands of others, could you find a new freedom?

But, you argue that if you had not gotten that mortgage, you would not have been able to have the equity in your home against which you could borrow again and again. Delighted that it turned out to be a forced savings program, you believe it is a blessing to you.

Not only were you lucky that you did not lose your home, but fortunate that you bought it where and when the real estate prices increased. Maybe you even paid off your home, continue to pay your taxes on time, and spend enough funds for home improvements and repairs. This is the upside of your dream, but would you like to keep that home in the family? Or, perhaps, would you like to use your amassed equity in some way to benefit your family members?

Why Use Is Better Than Ownership

Ownership is stranger than fiction. If you form an Irrevocable Trust, and transfer assets into it, such as residential property, the ownership becomes split. The Beneficiaries have equitable interest, and the Trustees hold legal title. Now recorded at the county, the residential property is owned by the Trust, and the Trustees' names are listed as the responsible parties.

As mentioned in Chapter 2, this is known in law as *divided title*, and no one actually “owns” the assets. The Trustees are legally responsible for the assets in the Trust and take care of the property, but only hold it for the benefit of the

Beneficiaries. A Trust removes direct ownership. It takes money and property out of your hands, where it can be used against you. Now in the hands of people removed from a direct involvement in enterprises, legal and financial complications are less likely. Property is safer.

In other words, if you own a home, have a bad automobile accident where you destroy another's property, the car insurance may not cover the damage. Usually, the claim may require your home to be sold to pay off the debt. If you do not own a home, though, it cannot be forfeited. There is no asset for the plaintiff to claim.

You say this is twisted? This makes no one responsible? This, though, is how most politically protected politicians configure their assets. They put them into what is known as a Blind Trust. These high officials in government cannot be sued for anything substantial. They have little in their name—perhaps a personal checking account and an old car. Since we cannot infuse morals and ethics into a society, we can only see to it that people are protected from frivolous lawsuits over which they have no control. For example, if you lose your job, your home can be lost, and then the IRS can hound you for years for back taxes.

This is not true when you place “your” home in an Irrevocable Trust. It is removed from you, providing there is more than eighteen months between the event and when you put the home into Trust. The only time the Trust which holds the property could be involved in a claim is if the Trust, acting as a Trust, causes the property damage. For example, the Board of Trustees holds a function at a person's home. The Trustees sign an agreement the facility is to be used for five hours. During that time, the party gets rowdy, and furniture and windows are damaged. Now, the Trust is clearly responsible for the harm and is responsible for paying the facility owners.

What about marriage? Assets in a Trust before the marriage remain in Trust, as they belong to neither the groom nor the bride, but to the Trustees held for named Beneficiaries. Assets gained after a marriage can be community property, unless the Trust buys them and keeps them for the children of the newly married couple. The couple can also put new assets in Trust for the children. We have one circumstance where a person had all his assets in Trust, and he wanted to marry a fine woman. He explained to her that he owned nothing as all his assets were in Trust. She fled. One could say she was after him for his money, or maybe he did not offer to initially fund a Trust for her.

Gullible But Rich

There is also the not-so-uncommon event where assets are in Trust, and the gullible, not-so-beautiful Beneficiary marries the dazzling princely rogue. If Trustees are doing their job, the cunning husband wastes oodles of time and money going to court trying to get the well-protected wife's assets. He will eventually discover that she does not own them, and the Trustees do not care about his plight.

As a reminder, please do not confuse the word Trust with a Statutory Living Trust. In a Living Trust, property remains in the name of the original owner, and is not removed into the names of the Trustees. Therefore, a Living Trust offers no asset protection, and only limited probate protection.

This chapter gives you some exposure to the potentially huge economic, peace-of-mind, legal and tax advantages of having the use of property in an Irrevocable Trust without the headaches and legal exposures of ownership. Now for a deeper understanding, it is time to share with you the history and evolution of Trusts.

We hope this chapter gives you an appreciation for a different set of values.