

Two Minute Legal Update

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Fortify Your Home With Tenancy By The Entirety

You are careful, cautious and conscientious. And you think you are insured against catastrophe. But have you and your spouse done enough to protect what could be your single, largest asset from creditors - your home? Perhaps you can do more. The law in Illinois allows married couples to own their primary Illinois residence in "tenancy by the entirety."

Tenancy by the entirety is a first cousin of joint tenancy. While it is similar to joint tenancy, it has the added benefit of protecting the home from the creditors of just one of the spouses. Joint tenancy property on the other hand may be seized by the creditors of only one spouse. For instance, suppose one spouse commits malpractice, is at fault in a serious automobile accident, or personally guarantees a

business debt that goes bad. If the couple's home is titled in joint tenancy, the creditors of that one spouse may seize the couple's home to satisfy the judgment taken against that spouse.

However, if the spouses owned their home in tenancy by the entirety, it could be protected from those same creditors. The law under tenancy by the entirety recognizes that the innocent spouse also owns 100% of the home and should not be punished for the actions of the other spouse. An added benefit of tenancy by the entirety is that there is *no dollar limit on the amount of home equity that can be protected* (compared to bankruptcy where the home exemption is capped at a very low figure).

Prior to the law's enactment, husbands and wives would often own their home as joint tenants. The more cautious couples would place their home in their spouse's (or

spouse's trust's) name. That solution is unappealing to many people as they take comfort in knowing that they own their own home. Others fear divorce. Tenancy by the entirety offers a different op-

Quips and Quotes

"There is no such thing as fun for the whole family."

—Jerry Seinfeld

tion. To qualify for tenancy by the entirety, the property owners must be husband and wife and only their Illinois primary residence may be held in tenancy by the entirety. Vacation property and property held for investment purposes do not qualify. Also, for estate tax purposes, tenancy by the entirety (like joint tenancy) may not be the best choice if each spouse does not have enough other assets in his or her own name to fully utilize the exemption from estate taxes.

However, if a married couple is concerned about creditor protection for one or both spouses and has enough assets other than their home to utilize both of their estate tax exemptions, or if their combined estates including their home are under the estate tax threshold, tenancy by the entirety may be their best choice. For spouses engaged in occupations with greater liability risks, tenancy by the entirety may be their best choice regardless of the size of their estates.

Thanks to tenancy by the entirety, spouses can still own their homes in their own names and have protection against third parties. Given today's litigious climate, it is no longer sufficient to simply be careful and conscientious. The prudent couple should actively take steps before catastrophe strikes to protect their home - and their equity in it.



Erin's son, Landon, enjoys a quick catnap, using his cheek as a pillow.