



# YOU, CINDY CRAWFORD, AND PORTABILITY



*Even I don't wake up looking like Cindy Crawford.*

—Cindy Crawford

Some years ago Cindy Crawford burst upon the modeling world as a natural beauty from DeKalb, Illinois. At first blush, she was a sight to behold. But even Cindy Crawford acknowledged that she did not wake up looking like Cindy Crawford.

Similarly, a new federal law has introduced a novel estate planning concept called portability. A quick peek may lead one to think that portability is a beautiful idea that will revolutionize estate planning. However, a closer look at portability may leave you crying like Tammy Faye Bakker.

Portability is designed to benefit married couples in certain circumstances. For example, with portability, if a husband passes away before 2013 and does not fully utilize his federal estate tax exemption, then his wife can use the husband's unused federal estate tax exemption.

However, portability is not all that you would hope it to be. So why might this new idea leave you crying? Here are several reasons:

1. Portability is a temporary idea. The concept is set to lapse on December 31, 2012. While there is a chance that portability may be extended, it is imprudent to rely on a temporary idea for planning purposes.

2. One benefit of traditional planning (rather than relying on portability) is that the children of the predeceased spouse are more likely to receive their intended inheritance. This problem is very common but infrequently addressed.

More than a few spouses have expressed concern that their surviving spouse could remarry. If the surviving spouse does remarry, is it wise to simply hope the children of the first marriage will ultimately receive assets when the surviving spouse passes away? Do you really think your spouse's next spouse will adore your children and grandchildren?

Further, if remarriage occurs and the new spouse also predeceases, the portability of the first spouse's exemption vanishes.

3. Illinois does not have the concept of portability, which means that a wealthy couple relying entirely on portability

may unnecessarily pay Illinois estate taxes of about \$200,000 or more.

4. Traditional estate planning, which relies on thoughtful asset titling between spouses, affords creditor protection to surviving spouses. Portability does not.

5. The federal generation-skipping transfer tax (GST) exemption is not portable. That means that wealthy families who rely on portability may voluntarily and unnecessarily re-expose their assets to estate taxes in their children's estates.

6. To get the benefit of portability, the surviving spouse must timely file an estate tax return for the predeceased spouse. If a couple is so cavalier as to rely on the new concept of portability (rather than actual estate planning), will the surviving spouse be attentive enough to file a complex, 40-page federal estate tax return?

Prudence suggests that leaving a desired result to hope or fate is naïve. The proper solution? Asset titling and estate planning, rather than misplaced reliance on a new (and possibly temporary) concept called portability.

At a glance, portability appears to be to estate planning what Cindy Crawford was to modeling. Under closer scrutiny, portability cannot hold a candle to traditional estate planning.



*Cindy says, "Don't rely on portability, and don't end up crying like Tammy Faye Bakker."*