

July 28, 2013

Summary Of Alternate Ways To Protect A House

	Do Nothing	Give To Kids (or kids' trust)	Sell to Kids (or kids' trust)	Contribute to FLP	QPRT ¹ (House GRIT)	GRAT ²	PRT ³	Foreign deposit of excess mortgage
Set Up & Annual	n/a	Prepare deed, PCOR, ⁴ Prop. 58, ⁵ 709 ⁶ & trust for kids	Prepare deed, PCOR, Prop. 58, note, TD and trust; escrow, lease	Prepare FLP ⁷ , corporate GP, heirs' trust, deed, PCOR, annual 1065 ⁸ , 1120S ⁹ & state fees	QPRT, calcs, deed, PCOR, Prop. 58, kids' trust; appraisal IRS Form 709	GRAT, calcs, deed, PCOR Prop. 58, kids' trust; appraisal; IRS Form 709	PR Plan and Trust calcs, minutes, trust deed, DOL ¹⁰ letter	LLC & trust; .
Pay Gift Tax?	No	If equity exceeds gift exclusion	Not if sale is for fair market value	Small, depends on kids' trust's LP %	No, unless remainder exceeds gift exclusion	No, unless remainder exceeds gift exclusion	No	No
Save Estate Tax?	No	On increase over gift value	On increase over price	Yes due to discounts	Yes if you survive QPRT term	Yes if you survive GRAT term	No	No
Home-stead?¹¹	Yes	Combine (part gift, part home-stead)	Combine (part sale, ¹² part home-stead)	No	Yes	Yes	Yes	Yes
Can Creditor Get House?	Yes	No	No, but can seize the note	No, but can get charging order on your LP units	BK Code §548(e)(1) (A): 10 years to challenge	BK Code §548(e)(1) (A): 10 years to challenge	BK Code §548(e)(1)(A): 10 years to challenge	Discourages those who do asset search

¹ Qualified personal residence trust.

² Grantor Retained Annuity Trust Advantages over Qualified Personal Residence Trust: smaller gift, so quicker allocation of generation skipping transfer tax exclusion; buy home back so step up in basis since it is included in estate; parents happier since they keep title to house.

³ Private Retirement Trust. California Code of Civil Procedure §704.115.

⁴ Preliminary Change of Ownership Report. Form BOE-502-A.

⁵ Claim For Reassessment Exclusion For Transfer Between Parent and Child. Form BOE-58-AH.

⁶ Federal Gift Tax Return.

⁷ Family limited partnership.

⁸ Federal partnership income tax return.

⁹ Federal income tax return for an "S" corporation.

¹⁰ United States Department of Labor.

¹¹ Compare California's exemption with the much larger ones in Florida and Texas (using other states' requires 1,215 days of residency).

¹² A sale of a part interest to a children's trust means the parent retains a tenancy in common interest, which is much less attractive to a creditor.

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You Rent?	No	not while kids are minors	Yes	Yes	Not until term ends	Yes	No	No
You Deduct Debt?	Yes	Yes if grantor trust ¹⁶	Yes if grantor trust	Your % flows thru	Yes	Yes	Yes	Yes
You Use Equity?	Yes	No	No	Indirectly, through FLP	No, unless it is sold	Yes	Yes	Yes

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¹⁴ Grantor Retained Annuity Trust Advantages over Qualified Personal Residence Trust: smaller gift, so quicker allocation of generation skipping transfer tax exclusion; buy home back so step up in basis since it is included in estate; parents happier since they keep title to house.

¹⁵ Private Retirement Trust. California Code of Civil Procedure §704.115.

¹⁶ A "grantor trust" is an irrevocable trust which is disregarded for income tax purposes. In other words, the parents – as grantors – are taxed on all of the trust's income. However, the trust is still not included in the parents' taxable estates. So it is recognized for estate and gift taxes as a separate legal person but disregarded for income tax purposes.