

# PIECES OF THE PUZZLE

A Newsletter from Arnold & Porter's Private Client Services Team

July 2014

## Methods of Holding Title to Real Property<sup>1</sup>

By Lisa Hill Fenning and Suzanne C. Farley

Title/Entity	Privacy (in California) <sup>2</sup>	Gifting	Property Tax Reassessment Rules Upon Transfer (in California)	Bankruptcy/Asset Protection (for primary residences in California, Florida and Texas, as indicated) <sup>3</sup>
Individuals	No		Generally, a transfer of real property by gift, sale or otherwise will result in a reassessment of that property unless an exclusion applies. One such exclusion provides that individuals may transfer, during life or at death, their primary residence and up to \$1M of assessed value of other real property to their children (and in some cases grandchildren) free from reassessment. This is known as the parent to child (or grandparent to grandchild) exclusion.	In CA, some protection for equity in homesteads. No protection for non-homesteads.  In FL and TX, unlimited homestead exemption.
Revocable Trust	The settlor may confidentially hold title to real property in a revocable trust if the title of the trust does not include the settlor's name and if the settlor either does not serve as trustee, or names a special trustee for purposes of holding title to trust assets.	A gift from a revocable trust will be treated as though it were a gift from the settlor(s), as a revocable trust is generally ignored for tax purposes.	The same rules of property tax reassessment applicable to individuals (see above) apply to property held by the trustees of a revocable or irrevocable trust. The beneficiary(ies) of the trust will be treated as the owner for property tax reassessment purposes.	In CA, TX and FL, treated as if individual settlor/debtor's property for purposes of the homestead exemption.  In CA, some protection for equity in homesteads. No protection for non-homesteads.  In FL and TX, unlimited homestead exemption.

### Contacts



**Lisa Hill Fenning**  
**Los Angeles**

+1 213.243.4019  
Lisa.Fenning@aporter.com



**Suzanne C. Farley**  
**San Francisco**

+ 1 415.471.3321  
Suzanne.Farley@aporter.com

1. This chart is intended to illustrate the principal methods by which private clients hold title to real property and certain pros and cons of each. For illustration purposes, the chart has been limited to certain states, however, with our wide network of local counsel throughout the country we could identify the specifics of such in any other states of interest.
2. That is, does the method of holding title protect the privacy of the individual, settlor(s), beneficiaries of the settlor's estate or members of the LLC (as the case may be). Note that a settlor (aka trustor or grantor) is the party that creates and funds (for purposes of this chart) a trust.
3. That is, in California, Florida or Texas (as indicated), does the real property receive protection from judgment creditors as a result of how such property is titled (i.e., individually, revocable or irrevocable trust or LLC).

Title/Entity	Privacy (in California)	Gifting	Property Tax Reassessment Rules Upon Transfer (in California)	Bankruptcy/Asset Protection (for primary residences in California, Florida and Texas, as indicated)
Qualified Personal Residence Trust (QPRT)	See revocable trust discussion above.	A tax efficient method of gifting real property to family members or others if the property appreciates during the trust term and the interest rate used for calculating the value of the gift (i.e., the IRC 7520 rate) is high enough. In a low interest rate environment, these are generally not recommended.	The same rules of property tax reassessment applicable to individuals (see above) apply to property held by the trustees of a revocable or irrevocable trust. The beneficiary(ies) of the trust will be treated as the owner for property tax reassessment purposes.	In CA, treated as if individual settlor/debtor's property for purposes of the homestead exemption during the QPRT term. Thus, some protection for equity in homesteads during the QPRT term.  Current FL case law indicates that the homestead exemption may be available for the settlor/debtor during the QPRT term.
Intentionally Defective Grantor Trust (IDGT)	See revocable trust discussion above.	A great way to make a gift of income-producing real property as it allows the settlor to continue to pay the income taxes on the gifted assets (and further reduce the settlor's taxable estate) while still removing the gifted assets from the settlor's estate for estate tax purposes. If the settlor prefers to not pay the income taxes for the trust, a non-grantor <sup>4</sup> irrevocable trust may instead be established.	The same rules of property tax reassessment applicable to individuals (see above) apply to property held by the trustees of a revocable or irrevocable trust. The beneficiary(ies) of the trust will be treated as the owner for property tax reassessment purposes.	No homestead exemption in FL because the settlor/debtor is not a beneficiary of the IDGT and therefore may not reside in the property as his or her primary residence.
LLC	Generally the best way to hold title to real property if privacy of the members is the primary concern.	A good way to make gifts of real property as it allows for discounting. However, in California there are downsides for property tax reassessment purposes (see next column).	Property owned by an entity is subject to different property tax reassessment rules than property held by an individual or a trust. Most notably, there are no exclusions from reassessment for transfers to children or grandchildren. In addition, generally speaking, California real property owned by an LLC will be reassessed if there is a change in control of the LLC (any one person obtains more than 50% of the LLC), or in some cases if, in one or more transactions, more than 50% of the LLC is transferred (even if a child or grandchild receives that interest as a gift or inheritance).	In CA, FL and TX, no homestead exemption.  In CA, FL and TX, property itself can be reached by any direct creditors of the LLC.

4. That is, a trust which does not treat the grantor as the owner of the trust assets for income tax purposes.