

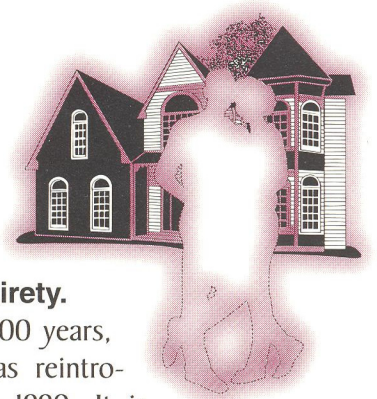
Home buyers should be aware of several ownership options available

by GARY R. GEHLBACH

Most couples buying a residence take title as joint tenants, without giving much thought to other options. How couples hold title, however, is an important issue that can have significant implications for estate taxes, probate administration, divorce, disability and potential liability.

Under Illinois law, married couples can hold title to their residential real estate in a number of ways. These forms can briefly be described as follows:

■ **Joint tenancy with right of survivorship.** This method of holding title is the most common. The principal advantage of joint tenancy is that upon the death of either spouse, the residence automatically becomes the sole property of the surviving spouse. Nonetheless, it is usually appropriate for an affidavit regarding estate taxes to be prepared and filed with the recorder's office upon the first spouse's death, and typically the surviving spouse should advise the county treasurer's office of the name change. For couples with potential federal estate tax consequences, however, joint tenancy may sometimes be inappropriate.



■ **Tenancy by the entirety.**

After an absence of over 100 years, tenancy by the entirety was reintroduced into Illinois law in 1990. It is restricted to a husband and wife and only applies to their principal residence, and only so long as the husband and wife reside in the property. The basis for tenancy by the entirety is a legal fiction (meaning it's not true but the law pretends that it is) that a husband and wife are one person. Therefore, if a couple takes title as tenants by the entirety, neither spouse can unilaterally transfer his or her title, mortgage the property, create a voluntary lien, or take any other action, without the simultaneous action of the other spouse. In other words, once a tenancy by the entirety is created, it can only be changed by the action of both spouses. The principal advantage of tenancy by the entirety is that a judgment against one spouse cannot affect title to the residence while both spouses are living.

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Employers must give employees chance to continue health coverage

by DOUGLAS E. LEE

One of the most common – and dangerous – misconceptions shared by smaller employers is that they need not provide departing employees the opportunity to continue their group health insurance coverage.

While most employers are familiar with COBRA and its insurance continuation requirements, some mistakenly believe that they need not meet these requirements if they do not meet COBRA's 20-employee threshold. An Illinois law, however, sets forth the same basic requirements as COBRA and

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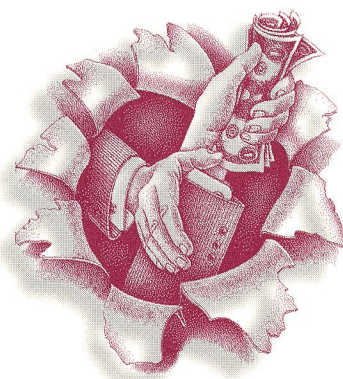
Amendments change garnishment procedures

by MEGAN G. HEEG

While recent amendments to the Wage Deduction Act were designed to minimize the burden on employers, employers must quickly become familiar with the new procedures.

Under the prior law, wage garnishments were valid only for 84 days. Under the amendments, which became effective Jan. 1, 1999, a wage garnishment continues until either the judgment is paid in full or employment is terminated. The first procedural change that employers will see is that their answers to the interrogatories are due between 21 and 40 days after service (the prior Act provided a 98- to 112-day time frame).

As before, employers must compute the amount of non-exempt wages to be withheld. Under the amended Act, however, employers are not to turn over those amounts to creditors before receiving a court order authorizing the disbursement. This order is to be entered after the employer files its answers to the interrogatories and likely



will direct the employer to remit withheld amounts on a monthly basis.

If the judgment is not paid in full by the end of the first full calendar quarter following the date the employer received the garnishment, the creditor is to prepare and mail a certification to the employer, stating the amount of the judgment remaining unsatisfied. Upon receipt, the employer must hand deliver or mail a copy of the certification to the employee.

If the employer receives a subsequent wage garnishment before a prior one has been completed, the subsequent garnishment remains effective and is triggered when the prior one is completed. Subsequent garnishments are effective in the order in which they are served on the employer.



Home buyers . . .

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If the spouse against whom the judgment has been entered dies first, the surviving spouse becomes the sole owner, and the judgment is deemed extinguished. If, however, the spouse against whom a judgment has been entered survives the other spouse, then the judgment lien attaches to the property.

Tenancy by the entirety is often used by couples when one spouse is in a profession that has a relatively high risk of personal liability.

■ **Land trust.** A land trust is a relatively simple trust that is often used to hide the names of the true owners. For example, a couple can enter into a contract to purchase a residence and provide in the contract for title to be transferred to another

(an individual or a bank or trust company) as trustee. Record title will then show that the property is owned by the designated trustee, and the names of the true owners will not generally be in the public records.

■ **Living trust.** In some cases, couples will transfer title to their residence to revocable living trusts: one for the husband and one for the wife. This is primarily done as part of a comprehensive estate tax plan and has the effect of invalidating joint tenancy, if that is how the couple previously held title. There are advantages and disadvantages of holding title in a revocable living trust, just as there are advantages and disadvantages of having a revocable living trust.

■ **Corporation, partnership or other entity.** On occasion, cou-

ples decide to hold title to their residence in a corporation, partnership, limited partnership, limited liability company, limited liability corporation or other legal entity.

How a couple should hold title depends on a number of factors, including the couple's relationship between themselves, whether their estates might have estate tax consequences, whether either spouse is in a high-risk profession and the possibility that either spouse might become disabled.

Most form real estate contracts assume that spouses wish to hold title in joint tenancy. These contracts can easily be modified, however. Buyers control how they will hold title and they should consider whether any other ownership option is more appropriate for their situation.



Coverage . . .

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it applies to all employers with group health plans that employ two or more employees.

Under COBRA, employers are required to provide most departing employees with written notice of their right to continue coverage under an existing group health insurance plan. In general, COBRA sets forth the following notice requirements:

- Any employee who is covered under the group health plan is entitled to notice within 14 days, unless the employee has been terminated for gross misconduct, in which case no notice is required.
- If the former employee's spouse is covered under the policy, the employer also must notify the spouse of his or her continuation rights.
- The former employee has 60 days to inform the employer of his or her intent to continue coverage.
- In most cases, coverage may be continued for up to 18 months, provided that the former employee is not eligible for coverage under another policy.



The Illinois statute is similar to COBRA but not identical. One issue that is unclear is whether an employer covered by COBRA need comply only with COBRA and not with the Illinois law. At least one court has said yes, but the Illinois Department of Insurance says no.

Under the Illinois legislation:

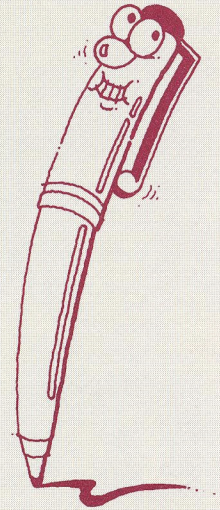
- Written notice of the continuation privilege must be either presented at the time of termination or mailed to the employee's last-known address.
- An employee is entitled to the notice if he or she has been insured under the group health plan during the three months prior to termination, unless the employee was terminated for committing a theft or other felony in connection with the employment.

Estate plans need proper beneficiary designations

by DAVID W. BADGER

Whether it be an IRA, a 401(k) plan, an ESOP, an insurance policy or a brokerage account, almost everyone today has some type of investment or retirement account. As common as these accounts are, many people cannot answer basic questions about their money: Who is the primary beneficiary? Who is the contingent beneficiary? Who pays the taxes when the money is received?

The importance of beneficiary designations cannot be overstated. Since the 1970s, a wide variety of new, taxpayer-friendly investment and retirement accounts has been offered. As a result, these accounts now comprise a significant portion of many people's net worth. If a living beneficiary is designated, the owner's Will does not control the disposition of these assets. If a beneficiary is not designated, the account agreement, rather than the



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- The former employee must elect continued coverage within 10 days of receiving the notice.
- The former employee's continuation rights may not extend for more than nine months.

Failing to comply with these notice requirements can subject employers to staggering liability. At least one court applying COBRA has held that an employer that fails to provide the requisite notice must pay all medical costs incurred by the former employee that would have been covered under the available group health plan.

In light of this potential liability, all employers should review their procedures for giving insurance continuation notices and for documenting both the delivery of the notices and the receipt of the employee's response.



Estate plans...

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owner's wishes, may determine who gets the money. Beneficiary designations therefore are an integral part of any comprehensive estate plan.

The problems that occur if a former spouse is the designated beneficiary are obvious, but it is surprising how often divorcing spouses neglect to change their beneficiary designations. For life insurance, a pre-divorce des-

ignation generally is binding, even if one or both of the original spouses have remarried.

Beneficiary designations also may significantly impact the amount of taxes that must be paid. Estate and income tax consequences of particular beneficiary designations should be evaluated as part of any estate plan. In the worst cases, the combined federal estate and income taxes can deplete retirement plans and other tax sheltered investments with a combined tax in excess of 70 percent. If

beneficiaries are properly selected, this tax impact usually can be minimized.

In some cases, one incorrect beneficiary designation can thwart what otherwise was a comprehensive and thoughtful estate plan. In others, an improper designation can increase taxes and result in probate delays and expenses. Deciding who should get your money is important, but the importance of implementing that decision must not be overlooked.



In Print and At the Podium

Mr. Lee publishes two commentaries each month on the website for The Freedom Forum First Amendment Center, which is based in Nashville, Tenn. The website, which can be found at www.freedomforum.org/first/welcome.asp, focuses on issues concerning the freedoms of speech, the press, religion and assembly. In two of his most recent commentaries, Mr. Lee discusses how the freedom of the press fared in 1998 and the importance of openness in the impeachment trial of President Clinton ... The Illinois Supreme Court in late 1998 adopted a rule change drafted by **Mr. Gehlbach** as chair of a committee of the Illinois State Bar Association. The change will allow Illinois attor-

neys to process monies in real estate closings on a same-day basis ... **Mr. Badger** in December addressed the Lee County Lady Landowners concerning estate planning issues ... **Mr. Beckman** recently spoke to the Commonwealth Edison Annuitants Club regarding Wills and estate planning ... **Mr. Lee** assisted in presenting a seminar on the issues surrounding compliance with the regulations governing leaking underground storage tanks ... **Mr. Beckman** (business law) and **Mr. Gehlbach** (real estate law) are teaching courses at Sauk Valley Community College. **Mr. Ehrmann** taught the business law course last semester.



Deals and Decisions

The Firm recently obtained two significant settlements in personal injury actions. In one, a federal lawsuit filed in Rockford, **Mr. Beckman** represented a woman seriously injured by a dog. In the second, **Mr. Lee** represented a man who suffered permanent leg injuries in a work-related fall. The settlement in this case was three times the amount awarded by a Lee County jury in a similar case just two years ago ... **Mr. Gehlbach**, serving as counsel for a local bank, recently closed on a \$5 million bond issue through the Illinois Development Finance Authority. ... In a rare "reverse sexual harassment" case, the Firm obtained a set-

tlement for a male employee who accused his female supervisor of sexual harassment ... **Mr. Lee** recently completed successful negotiations with the U.S. Department of Labor concerning his client's alleged failure to comply with the Department's affirmative action requirements ... **Mr. Gehlbach** assisted one of the Firm's corporate clients with a product distribution agreement for a company with significant national and Internet sales ... The Firm is representing a landfill operator seeking local siting approval for an expansion in Rock Island County. Approval is expected in mid-February.