If you are married and are a doctor, lawyer, dentist, small business owner, real estate owner or developer, or have creditor concerns of any kind, then you may be interested in a new Missouri law. This law authorizes the creation of a joint revocable trust by a married couple - called a qualified spousal trust - which has creditor protection benefits.

Tenants By The Entireties Property

As way of background, tenants by the entireties is the technical term for the joint ownership of property by spouses living in Missouri. Under Missouri law, this jointly owned property is deemed owned by the marital unit - an entity separate from either spouse alone. If one spouse has a judgement against him or her alone, the jointly owned assets are protected. However, if there is a judgement against both spouses, the jointly owned assets will be liable for the joint debt. The IRS is the only creditor whose lien can attach to a debtor spouse’s interest in tenants by the entireties property and the IRS is the only creditor who can force a sale of a spouse’s half interest in the property.

You can own almost any type of property as tenants by the entireties – real estate, limited liability company interests, partnership interests, securities, bank and brokerage accounts, automobiles, and other tangible personal property. There are disadvantages to owning property as tenants by the entireties. If both spouses pass away at the same time, then the property will be subject to probate. If a spouse dies, the survivor then owns 100% of the property outright and has no asset protection.

Lastly, generally, you cannot accomplish estate tax planning with tenants by the entirety property.

Traditional Individual Revocable Trusts
In most basic estate plans, a husband and wife each create their own separate revocable (living) trust. However, a revocable trust has no asset protection benefits. The theory is that because you can unilaterally revoke the trust and remove all of the assets from the trust, a creditor should be able to do the same. Clients with asset protection concerns face an important, and often times difficult, decision – whether to leave assets in joint name with their spouse for creditor protection or transfer them to a revocable trust to achieve probate avoidance and estate tax planning.

**Joint Trusts**

Some spouses opt to create a joint revocable trust. With a joint trust, both spouses create the trust and transfer assets to the trust. Typically, this joint trust serves as the primary estate planning document, replacing the separate revocable trusts. Under prior Missouri law, it was unclear if joint trusts retained the asset protection benefits of tenants by the entireties property.

**Qualified Spousal Trust**

On August 28, 2011, the Missouri legislature passed a new law providing that if tenants by the entireties property is transferred to a “qualified spousal trust” (“QST”), then the property will have the same immunity from the claims of the separate creditors of each spouse as would have existed if the spouses had continued to hold the property as tenants by the entireties. This new law applies to all trusts – those created before and after the new law was enacted. A QST is a trust created by spouses which is revocable by either or both of them acting together while either or both are alive. It can contain any other trusts terms that are consistent with the law.

There are two types of QSTs – a basic QST and a separate share QST. One benefit to the separate share QST is that the surviving spouse can have creditor protection for one-half of the tenants by the entireties property. With a basic QST, when a spouse dies, the survivor loses all creditor protection. Also, a couple can implement estate tax planning with a QST. With the uncertainty in the estate tax laws, it is often unclear who needs estate tax planning at this point.

If a spouse transfers property which he or she owns individually (i.e. the property is not tenants by the entireties property) to a QST, then there is no creditor protection. It is important for asset protection purposes that all assets transferred to a QST are jointly owned by the spouses prior to the transfer to the QST. There, however, may be family law consequences of re-titling individually owned property into joint names.

**Who Needs a QST?**
"THE NEW MISSOURI QUALIFIED SPOUSAL (JOINT) TRUST - THE PERFECT ASSET PROTECTION TECHNIQUE?"

The bottom line is a QST can provide you with the best of all words. Your assets will be protected from your individual creditors, you will avoid probate, and you can provide for estate tax planning at the same time. If you have creditor protection concerns, you should consider a QST. This may entail an update of your entire estate plan, but the potential creditor protection benefits can be worth the effort.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any written advice contained in this memorandum is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed on any person under the Internal Revenue Code.