By Phil Hunt

Special to the Times

Q: Last year, we established a living trust and put our property into it to protect our children from estate taxes or probate when we pass away. On our current tax statement, our taxes went up more than 2 percent over last year. I am under the impression from reading your articles that the county can only increase the taxes 2 percent because of Prop. 13. When we retitled our property into our trust, did we trigger something that caused the taxes to go up?

A: Yes, something did happen and it is up to you to correct it. And here is what happened. When you retitled the property in the name of the trust and filed the deed with the county recorder to have it recorded, the county recorder's office picked up on the transfer and you lost your $7,000 homeowners' exemption that everyone gets if they reside in the property as their principal residence.

As you are probably aware, anyone who occupies a property as their principal residence gets a $7,000 exemption on the assessed value of the property for tax purposes. This exemption, of course, reduces your tax on the property because you are paying on a reduced assessed value.

When you recorded it in the name of the trust, it is no longer in your name and a trust can not occupy a property as a primary abode; therefore, the exemption is gone.

You will have to file a request with the county assessor's office to establish the property as your principal residence, as the trustee of the trust. To the best of my knowledge, they do allow the trustee of the estate, who lives in the property, to claim a homeowners' exemption.

In almost all cases, the county and the cities with transfer tax don't charge a transfer tax on this type of title transfer.

There are many benefits to placing your property into a trust and a few negatives.

If you want to refinance the property, you must first remove it from the trust and put it back into your name. Lenders do not make loans to trusts; they make loans to people. It then has to be put back into the trust. This is no big hassle, any title company can take care of it. At the same time, they will issue you new title insurance.

NOTE: When you made the transfer of ownership from you to the trust, unless it was done through a title company with an escrow, you most likely no longer have title insurance on the property. The reason for having title insurance is to guarantee clear title to the property. Title to the property could be under attack at any time from a number of sources. If you have no title insurance, there is no guarantee. If you didn't know this, don't feel bad; I have spoken to a few attorneys who also did not know.

Nothing here should be construed as legal advice. Contact a real estate attorney for legal advice.

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