

Married? Consider Upgrading the Deed to Your House

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In 1604, Sir Edward Coke said, “Your house is your safest refuge.” Or words to that effect. He was writing in Latin, but the venerable English judge got his point across well enough. The expression has come down to us in the 21st century as “A man’s house is his castle.”

The family home should be a safe haven where we can take refuge from the perils and dangers of the outside world. Within its walls, relationships are nurtured, friendships are enjoyed, and children are loved and encouraged.

In addition to the locks and security lights that attempt to keep burglars at bay, a married couple’s home can be protected from certain types of creditors simply by how the property is titled. Owning a house as “tenants by the entirety” is reserved for married couples and can provide significant benefits to those who take advantage of it.

First, this form of ownership will transfer the house to the survivor if either spouse should die. This transfer will be automatic and efficient, even if the deceased spouse dies without a will. Second, it will protect the house from creditors with a claim against either spouse individually.

Titled this way, the family home is less likely to be in jeopardy if one spouse becomes the target of a lawsuit, defaults on a loan, or needs to declare bankruptcy. This can be especially important to individuals in a profession that carry a high risk of personal liability, such as doctors, lawyers, and contractors, as well as teachers, realtors, and therapists. In this way, it serves as a form of free insurance.

Ownership of a home as tenants by the entirety is available in many states, including Maryland. And thanks to recent changes in state law, married couples in Maryland can enjoy these creditor protections even if they place their residence in one or more revocable living trusts.

The protection against creditors does have its exceptions. One is liens placed on the property by the IRS. Another is creditors who have obtained a judgment against both spouses jointly.

The right to title your home this way is one of the unsung benefits of marriage. It is the state’s way of protecting marriages by ensuring that one spouse’s creditor problems don’t put the other spouse and any children out on the street. And, of course, with same-sex marriage legal nationwide, it’s a benefit that applies to gay and straight couples alike.

If you and your spouse owned a house *before* getting married, it’s probably titled as “joint tenants with right of survivorship.” This form of ownership also transfers the property to the survivor if one spouse should die, but it does not protect against creditor liens. Fortunately, you can upgrade your ownership of the house simply by having a new deed prepared. Contact an

attorney who practices in this area to get started.

The executed deed will need to be filed with the county Land Records office, and you might need to obtain a lien certificate and pay any taxes or other obligations before the deed can be recorded. There should be no transfer or recordation taxes to pay, but there is a nominal recordation fee. If you have a mortgage, a conversation with the provider is advisable beforehand.

Once the deed is recorded, you can take comfort in knowing that your castle now has an extra measure of protection from the perils and dangers of the outside world.