ESTATE PLANNING FOR REAL ESTATE:
QPRT – QUALIFIED PERSONAL RESIDENCE TRUST

The qualified personal residence trust (“QPRT”) is a trust enacted by Congress and detailed by Internal Revenue Service (IRS) regulations. The QPRT allows for a principal residence and a vacation home to be transferred to family or other chosen beneficiaries at reduced gift tax costs, while reducing potential estate tax. The QPRT may also provide significant asset protection from creditors.

A QPRT is established by creating an irrevocable trust and then transferring a principal residence and/or vacation home to the trust. The trust allows for the owner of the real property to retain the right of usage for a period of time (which will be the term of the QPRT), and at the end of the term, the real property is transferred to family or other chosen beneficiaries. The real property will be effectively removed from the owner’s estate, but only if the owner survives the QPRT term.

The owner is usually the trustee of the trust and continues to pay for the normal and customary expenses for maintenance, utilities, taxes, insurance, mortgage, etc., during the QPRT term. Therefore the owner as trustee can maintain control of the real property during the QPRT term.

Upon the transfer of the real property to the QPRT, a gift for gift tax purposes will occur. However, a significant advantage is the favorable gift tax valuation rules applicable to the QPRT. The QPRT allows the value of the real property to be determined using IRS actuarial tables that discount the fair market value of the residence by the term period of years of the retained usage interest by the owner. Generally, the longer the QPRT term, the lower the gift tax value of the transfer. If another form of gifting were used, the total value of the residence would be subject to gift tax valuation. However, the owner must survive the QPRT term in order for the real property to be removed from his gross estate and thereby achieving the estate tax savings. If the owner does not survive the QPRT term, the real property will be included in the gross estate of the owner.

If the owner survives the QPRT term, the real property will be transferred to his family or other chosen beneficiaries. However, the owner can be given the right to rent the real property back at the end of the QPRT term. If the QPRT is drafted properly, the rent payments will not be income to the QPRT or the beneficiaries and the rent payments will essentially be additional tax-free gifts further reducing the owner’s estate.

The QPRT also provides significant asset protection for the owner because the owner no longer owns the real property. For this reason, creditors may be unable to place liens against the QPRT.