

The Kansas Community Property Trust Act

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Overview

For generations, married couples in Kansas have operated under standard “common-law” property rules. This meant that if you bought an asset together—like family farmland—and one spouse passed away, only that spouse’s 50% share of the property received a “step-up” in tax basis to its current fair market value. The surviving spouse was left holding their original cost basis on the other half, opening the door to massive capital gains taxes if the property was later sold.

That is all about to change. Effective July 1, 2026, the new Kansas Community Property Trust Act (Act) (enacted via House Bill 2590) completely alters the estate-planning game. Kansas is joining a select group of states that allow couples to voluntarily “opt in” to a community property framework through a specialized trust, completely wiping out that lopsided tax burden.

The Big Financial Win: The “Double Step-Up”

The most compelling reason to establish a Kansas community property trust is to secure a tax-saving mechanism known as the double step-up in basis. Under IRC §1014(b)(6), if an asset is legally treated as community property, *both halves* of that asset reset to its full market value on the date the first spouse passes away.

To see how much money this keeps in your pocket, let’s look at a straightforward example:

The Tale of the Appreciated Farmland

Imagine a married couple who purchased Kansas farmland back in 1995 for \$500,000. Today, the first spouse sadly passes away, and the land has appreciated to a current market value of \$3,000,000.

- **The Old Way (Joint Tenancy):** Only the deceased spouse’s half steps up to current value (\$1.5 million). The surviving spouse’s half sticks to its old cost basis (\$250,000), making their total combined tax basis \$1,750,000. If the survivor sells the farm for \$3,000,000, they are hit with a \$1,250,000 taxable capital gain.
- **The New Way (Community Property Trust):** Thanks to the new law, *both halves* of the property step up to their current value, pushing the total combined tax basis to a full \$3,000,000. If the surviving spouse sells the farm for \$3,000,000, they pay a flat \$0 in capital gains tax.



Requirements for Setting Up Your Trust

To ensure your trust is legally compliant under Kansas law and recognized by the federal government, it must check several strict statutory boxes to form a valid “Kansas nexus”:

- **Qualified Kansas Trustee:** The trust must have at least one trustee who is either a permanent Kansas resident or a corporate fiduciary authorized to act as a trustee within the state.
- **Corporate Presence:** If you select a bank or corporate trustee, that institution must maintain an active, physical office space inside the state.
- **Clear Documentation:** The trust agreement must be signed by both spouses, explicitly stating the intent to transmute their joint or separate holdings into state-recognized community property.
- **Mandatory Warning:** The paperwork must prominently feature a clear, capitalized warning advising both spouses to seek independent legal counsel because the trust significantly rewrites their everyday property rights.

The Fine Print: Risks to Consider

While the mathematical benefits can save families millions of dollars, jumping into a community property trust is not a magic bullet. It requires careful navigation alongside an advisor due to several technical risks:

The Step-Down Trap: Basis adjustments move both ways. If you place an asset in the trust that decreases in value below what you originally paid for it, the law will force a *step-down* in basis at your death, which hurts your subsequent tax positioning.

The Creditor Shield Sacrifice: If you currently hold marital assets under standard tenancy-by-the-entirety rules, those assets are protected from being seized to pay off the singular debt of just one spouse. Transmuting those assets into community property permanently strips away that protection, exposing up to half the trust corpus to individual liabilities and the entire trust to joint debts.

Asset Exclusions: Certain retirement or deferred holdings—known legally as Income in Respect of a Decedent (IRD), such as traditional IRAs or 401(k) plans—are completely barred from receiving a basis step-up and should never be put into this type of trust.

Conclusion

The Kansas Community Property Trust Act is an incredibly forward-thinking modernization of state law, actively protecting local capital and family wealth from migrating out of state. Alongside other major layout upgrades to the Kansas Uniform Trust Code – such as the ability to build “quiet trusts” that limit when young beneficiaries are notified of their inheritance – Kansas has established itself as a premier venue for comprehensive wealth preservation.



If you are a landowner or retired couple sitting on heavily appreciated property, now is the time to sit down with your CPA and estate attorney to map out your transition plan before the July 1, 2026, effective date.

A more thorough, technical analysis of the new law can be found on my Substack at mceowenaglawandtax.substack.com

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