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neighborly news & entertainment

Volume 3, Issue 6

February 2010

Estate Planning Red Flag

Your Child is on the Title to Your Home or Other Assets

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One of the most common, and costly, estate planning mistakes is to own property jointly with your child. Many people hold property – such as homes, bank accounts and investments – with their children as joint tenants with right of survivorship. Their goal is to avoid probate and to ensure that when they die the property is transferred to their child automatically without the need for a Will or other estate planning vehicle.



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There are several potential problems with this approach!

- Unless you purchase real estate together with your child, adding his or her name to the title is considered an immediate taxable gift of half of the property's value. This gift may necessitate the filing of a Federal Gift Tax return and have future consequences for both estate and gift tax purposes.
- As soon as your child becomes a joint owner, the property is exposed to claims by his or her creditors or could be "caught-up" in a messy divorce.
- While joint cash accounts with your child are not considered a gift, your child may gain access to such bank accounts, and can dispose of them without your consent or knowledge.
- For other assets, such as real estate, you may not be able to sell or borrow against that property without your child's consent and signature.
- Your one child receives the property immediately when you die, even if he or she lacks the maturity to manage it, or may be one of several children.
- When you die, 100% of the property's value will be included in your taxable estate even though probate is avoided.

- Your child can step up the basis on 100% of the property that is included in your estate. If any portion of the property is deemed to be your child's share, there would be no step-up in basis for that portion of the property.

Another potential problem with joint tenancy is that you may unintentionally disinherit a family member. Suppose, for example, that you and your spouse each have one child and several grandchildren from previous marriages. After you die, your spouse adds both children to the title to the family home as joint tenants with right of survivorship. If your child dies before your spouse's child, the latter will become sole owner of the home when your spouse dies, effectively disinheriting your grandchildren.

All of the problems previously discussed can be avoided with one or more common estate planning techniques. The distribution of investment accounts and cash deposits can avoid probate through the use of carefully drafted Transfer on Death ("TOD") or Pay on Death ("POD") designations. A Revocable Management Trust (i.e., a "living trust") can avoid probate while acting as a Will substitute directing the distribution of assets, etc. You must carefully weigh the pros and cons of joint ownership with a child.



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