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Adding offspring to real estate title may be risky

Homeowner should consider revocable living trust

Monday, June 27, 2005

By **Robert J. Bruss**
[Inman News](#)

DEAR BOB: After the death of my husband in October 2004, our home became mine by joint tenancy with right of survivorship. I would now like to deed my home to my youngest daughter. But I am afraid to deed it to her now, although I do not feel she would put me out. I am afraid if she and her husband are sued, my house could be taken. I am going to put her on my deed for survivorship. My problem is if I get sick and have to go to a nursing home, I do not want Medicaid to get my home. Is there any solution to this problem? – Beatrice J.



DEAR BEATRICE: Presuming you cleared your late husband's name from the home's title, and that you have substantial equity in your residence, why do you want to complicate the situation by adding your daughter to your title and give up control?

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A far-better alternative is to create a revocable living trust and then deed the title to your home and other major assets into your living trust. You then maintain 100 percent control and can refinance, sell or do whatever you want with your living-trust assets.

If you become incapacitated, your living-trust successor trustee (presumably your daughter) can manage your home and even sell it if necessary to pay for your care.



Should you need income, you could obtain a reverse mortgage. But if your younger daughter is on the title, she would disqualify you from a reverse mortgage.

If you get sick and have to go to a nursing home, then your home could be sold to pay for your care in a first-class facility. Medicaid welfare is designed for individuals who can't afford the best care.

While you have substantial home equity, it's yours to use and enjoy. Don't give it away. Adding your daughter to your title could greatly complicate matters.

ONE SPOUSE HAS GOOD CREDIT; OTHER SPOUSE HAS BAD CREDIT

DEAR BOB: My credit is poor due to a long dry spell of unemployment and financial mistakes when I was single. I am now married. My husband bought a house in September 2000. He recently applied for a home equity loan through the current mortgage holder. It was denied due to "uncreditworthiness" of the co-applicant (that's me). But I never applied for the home equity loan. He wants to add a deck, put in hardwood floors, replace the carpet, and paint. He would then like to sell within a year. Any suggestions? – Lynne W.

DEAR LYNNE: If title to the home is held in your husband's name alone, and if his credit is good, he should have no problem obtaining a home equity loan or credit line.

However, if your name was added to the home's title after the marriage, the lender then must also consider your credit because you will be a co-borrower.

If that is the situation, you can sign a quit claim deed to your husband to remove your name from the home's title so he can obtain a home equity loan in his name alone based on his good credit. For more details, he should consult a loan officer at the bank where he applied for this financing.

NO TAX FOR HEIRS ON MOST INHERITED PROPERTY

DEAR BOB: My two sisters and I recently inherited a house worth around \$750,000 from our late mother. None of us want the house as we live far away and want to sell it as soon as title is transferred to our names by the probate court. Our question is how much inheritance tax must we pay on this house? – Ben H.

DEAR BEN: The exact answer depends on the residence state of your late mother. The progressive states have abolished inheritance taxes on heirs who receive inherited property. But a few backward states still cling to this tax revenue source.

However, if your late mother died in 2004 or 2005 and left a net estate exceeding \$1.5 million, then a federal estate tax will be due. The estate executor must pay any federal estate tax before distribution of assets to the heirs.

If the estate taxes can't be paid out of liquid assets, such as bank accounts, stocks and bonds, then the house might have to be sold to pay taxes and you will receive cash instead of the house. Ask the estate executor or attorney for details.

HOW CAN LANDLORD CHECK RENTER'S CREDIT?

DEAR BOB: Is there any way for a landlord to look at a prospective tenant's credit prior to renting to them? And is there any way for a landlord to report on a bad tenant? – Patty R.

DEAR PATTY: Smart landlords always obtain a copy of a prospective tenant's credit report and FICO (Fair, Isaac and Co.) score before renting. Most cities have tenant screening companies which, for a fee, can obtain credit reports, FICO scores, and even court records of any evictions of your applicant.

If you don't want to hire one of these companies, you can ask your prospective tenant to supply their credit report and FICO score. The best source is www.myfico.com. The cost is \$14.95 per report. While you are interviewing the tenant, you can have the applicant run their own credit report on your computer in your office.

Unless you are a member of a credit bureau, you can't report on a bad tenant who didn't pay the rent.

HOW CAN WIFE GET DEAD EX-HUSBAND'S NAME OFF HOME TITLE?

DEAR BOB: My husband and I were married 24 years. He asked for a divorce so he could marry his 34-year-old assistant. Although we have two wonderful kids, now grown, I realized he was unfaithful so a divorce was best. That was in 2001. He quickly remarried. I got the house in the divorce settlement. But he never removed his name from the title. He died in 2004 of a heart attack. She probably wore him out. How can I get his name off my home title? She inherited everything under his

will – Jeanne C.

DEAR JEANNE: If you and your late ex-husband held title as joint tenants with right of survivorship, in most states all that is required to remove a deceased joint tenant from the title is to record (1) a certified copy of the death certificate and (2) an affidavit of survivorship.

However, if you and your late ex-husband held title by another method, such as tenants in common, a court order will probably be necessary to clear your title. Your divorce attorney who represented you can probably clear your title, which should have been resolved at the time of the 2001 divorce.

GREEDY REALTY AGENT CUT BUYER'S AGENT'S COMMISSION

DEAR BOB: We recently listed our home for sale at a reduced 5 percent sales commission because homes in our area sell like hotcakes with little agent effort. Within two weeks, we received several purchase offers exceeding our asking price. We accepted the best one and successfully closed the sale. However, we later learned from the buyer's agent she only received a 2 percent commission and our greedy listing agent kept a 3 percent sales commission. Is this legal? We thought our listing agent would take a 2 percent or 2.5 percent commission – George Y.

DEAR GEORGE: The sales commission split between the listing agent and the selling agent is strictly a matter for the agents to negotiate. Usually, the listing agent specifies the commission split in the MLS (multiple listing service) description of the home.

However, when a listing agent offers an abnormally low commission split in the MLS, such as only 2 percent, many buyer agents refuse to show the property to their buyers unless they have nothing else to show their prospective buyers.

Your greedy listing agent offering only a 2 percent commission to the selling agent probably hurt you because many buyer agents didn't show your home to their buyers due to the low commission. However, at this time I don't see any remedy for you other than to never recommend that agent.

I.R.S. TAX LIEN APPLIES ONLY TO JOINT TENANT'S HALF

DEAR BOB: My late mother and I were joint-tenant-with-right-of-survivorship owners of her condominium. I knew she had tax problems, and the

IRS had filed a tax lien, but we never discussed it. As the surviving joint tenant, I would like to sell the condo. But the IRS has a \$14,000 tax lien on file. Do I have to pay off that \$14,000? – Brent H.

DEAR BRENT: Probably not. The general rule is a recorded lien against a joint tenant does not survive the death of that joint tenant. In other words, when the joint tenant dies, the recorded judgment or IRS tax lien against that joint tenant also "dies."

My suggestion is to consult a local title insurance company to review your title and determine what steps are necessary to clear the title so you can sell the condo. Because the IRS did not enforce its recorded lien before your mother's death, the lien against her joint-tenancy interest was probably wiped out when she died.

The new Robert Bruss special report, "Seven Best Ways to Avoid Capital Gains Tax When Selling Your Home or Investment Property," is now available for \$4 from Robert Bruss, 251 Park Road, Burlingame, CA 94010 or by credit card at 1-800-736-1736 or instant Internet PDF download at www.bobbruss.com. Questions for this column are welcome at either address.

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