Real Estate News

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January 2007

Adding a Name to the Deed to Your House

To add a person to your deed a new deed must be prepared. The new deed must be signed, notarized and recorded in the office of the town clerk where the property is located. A Vermont transfer tax may be due at the time the deed is recorded unless the transaction qualifies for an exemption.

The best way to hold title depends on the property owner's personal situation and real estate goals. Is the major goal to avoid probate costs and delays when a sole owner dies? Do parents want to be sure their adult children receive the property without probate?

The choices for holding title by two or more persons are tenancy by the entirety, joint tenancy with right of survivorship, tenancy in common, a retained life estate deed and a transfer on death deed.

Tenancy by the Entirety is usually used when a spouse is added to a deed. ***Tenancy in Common*** is most likely to be used where the co-owners are not married or they have contributed different amounts to the acquisition of the property. The assets of a commercial partnership are normally owned as a tenancy in common. ***Joint Tenancy with Right of Survivorship*** is most common between relatives, such as parent and child, and in any other situation where the parties want ownership to pass immediately and automatically to the survivor.

How to Hold Title when Adding a Name to your Deed

Sole Ownership - If you are single, you probably hold title to your real estate in your name alone. This is called *sole ownership*.

Tenancy in Common: O conveys to A and B, as tenants in common. (If one owner dies, his or her interest passes through probate to beneficiaries of Will. Usually used when non-relatives own property; e.g. business associates).

Tenancy by Entirety: O conveys to H and W, as tenants by the entirety. (May be used by married couples only. Avoids probate).

Joint Tenancy: O conveys to A and B, as joint tenants with right of survivorship. (Avoids probate. Owners have equal interest. All must sign to mortgage or sell. Widely used when two or more non-married persons own property).

Life Estate Deed: O conveys to A, but reserves a life estate unto himself. (Avoids probate. Future owner(s) has vested interest, but no *possessory* interest until lifetime owner dies. All must sign to mortgage or sell. Not widely used anymore; replaced by TODD Deeds).

Transfer on Death Deed (TODD): O conveys to A, but reserves a life estate unto himself with the exclusive right to *sell, mortgage, lease or convey* the property during his lifetime. (Avoids probate. Future owner(s) has no interest until lifetime owner dies. Lifetime owner can sell, mortgage, lease or convey without signature of future owner(s). Currently most popular form of title when adding children's names to deed).

A ***Life Estate Deed*** is also commonly used between relatives. It provides a mechanism to bypass the probate process and creditors and allows the owner to retain a life estate interest, which gives him or her the exclusive right to live on the property for life. Upon death all interest passes to the designated individual(s) named in the deed. In recent years the ***Transfer on Death Deed (TODD)*** has become the deed of choice when adding children to the deed to one's home. The owner retains the right to possession of the property and also the exclusive right to sell, mortgage, lease or convey the property during lifetime. By retaining these rights in the case of parents, for instance, they can mortgage or sell the property without needing their children's signature. If they execute a new Transfer on Death Deed the first one is voided.

The following is a further description of each form of concurrent title. It is not intended to address all ownership or estate planning issues, e.g. medicaid planning.

Tenancy in Common is usually used when two or more owners are not related. As a tenants in common each owner can own a specific, unequal share. For example, one might own a 25 percent interest and another a 75 percent share. When one tenant in common dies, the share passes through probate to the beneficiaries of his or her Will. **Probate:** Deceased owners interest must pass through probate; **Taxes:** Upon death of joint owner, interest passes to beneficiaries of Will who receive a step-up in tax basis, **Liability:** Individual creditors can attach any one co-tenant's interest.

Tenancy by the entirety. In most cases, this is the correct way for married couples to hold title. In fact, it is available only to married couples. Tenancy by the entirety creates an estate in which each spouse has an undivided interest in the property, or the equal right of possession and enjoyment during their joint lives. Like joint tenancy, it also vests each spouse with the right of survivorship so if one dies, his or her interest transfers to the survivor.

Since probate is unnecessary on the death of the first spouse, the property won't be tied up in court. Instead, it can be sold right away if that's necessary. Also, the survivor takes title to the share of the property attributable to the deceased at its "stepped-up basis," or its fair-market value as of the date of the spouse's death.

Equally important, the individual creditors of either spouse cannot attach a lien on a property held as tenancy by the entirety. If a judgment is against both of you, the creditor can put a lien on the house, but not if the judgment is against just one of you.
Probate: deceased owners automatically passes to surviving spouse (no probate); **Taxes:** Upon death of joint owner, surviving owner(s) get step-up in tax basis, **Liability:** Individual creditors cannot attach one owner's interest.

Joint Tenancy with Right of Survivorship. In a joint tenancy with right of survivorship, joint tenants may have unequal interests. When one joint tenant dies, the surviving joint tenant(s) automatically receives title without going through probate. Creditors of one joint tenant can attach his or her interest. **Probate:** Deceased owners interest automatically passes to surviving owner (no probate); **Taxes:** Upon death of joint owner, surviving owner(s) get step-up in tax basis, **Liability:** Individual creditors can attach any one joint owner's interest.

Life Estate Deeds. The owner keeps a "life estate" and conveys a "remainder interest" to someone who will inherit the property upon his or her death. The current owner continues to occupy and use the property and is entitled to all money that may come from the property. However, the owner cannot sell the property without agreement of and participation by the holder of the remainder interest. Further, the IRS puts a value on the creation of the remainder interest, and if it is large enough there may be gift tax consequences.
Probate: Deceased owner's interest terminates upon death. (no probate); **Taxes:** Upon death of life tenant, surviving owner(s) get step-up in tax basis, **Liability:** Individual creditors can attach any owner's interest.

<u>Transfer on Death Deed (TODD)</u>. These deeds transfer real property to others, usually the owners' children, but reserve to the owners a life estate and all other present ownership rights including the right to sell, lease, mortgage or convey the property during their lifetimes. This keeps control of the property with the original owners during their lives, but passes the property outside probate on their deaths. It gives the recipients a *step-up in the tax basis* of the property to date of death value, avoiding Capital Gains Tax under current tax law. It also is not considered a *penalized transfer* for Medicaid purposes, but does avoid Medicaid recovery by avoiding probate.

Once the deed is recorded, the owner continues to use the property with no restrictions. He can sell or mortgage it, or even record another Transfer on Death Deed changing the recipients. If the owner sells the property the Transfer on Death Deed is voided. Likewise, if a subsequent Transfer on Death Deed is recorded the first one is voided.

Because the Transfer-on-Death Beneficiary Deed can be revoked it avoids the problems that exist when a homeowner adds a child or grandchild to his or her deed in a joint tenancy. In such cases, the home ends up in the son's divorce, or the grandson's bankruptcy, or with liens from a her daughter's creditors.
Probate: Deceased owner's interest terminates upon death. (no probate); **Taxes:** Upon death of life tenant, surviving owner(s) get step-up in tax basis, **Liability:** Creditors cannot attach children's interest.