



Transferring wealth & wisdom from generation to generation



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HOMESTEAD: “I JUST RE-TITLED MY HOMESTEAD AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP WITH MY CHILDREN” - “DID I MAKE A MISTAKE?”

Too often we hear that homeowners have added their children onto the title to their homestead to avoid probate and/or to avoid paying estate taxes. This is rarely, if ever, a good idea. Read on...

Is there ever a good time for your children to own your homestead ?

No. As a General Rule: Never add your children on to the title of your homestead. Maybe I should clarify...“Never say never.” For every rule, there is an exception. It is rarely a good idea to hold your real estate (especially your Florida homestead) in joint name with your children. This article will provide a checklist for the hot issues that should be considered and discussed with your advisors before adding a child on to the title to your Homestead. Enjoy!

• Homestead Exemption

Adding a child on your title most likely will result in the loss of part of your Homestead exemption. As discussed in previous articles, there are numerous homestead protections, including, but not limited to, exemption from creditors in bankruptcy, exemption from real estate taxes and creditor protection for heirs upon your death.

• Homestead - Save Our Home (SOH) Cap

Adding your children on your title to your homestead will most likely result in increased real estate taxes due to losing part of the SOH Exemption.

• Home Equity

By adding your children on your title to your homestead, you may be shifting present and future equity to them. (see asset preservation issues below)

• Exposure to Liability

Adding your children to the title to your homestead may result in a combined liability due from accident by guest - your standard slip and fall type liability. This is a very serious concern.

• Exposure to Spousal Rights

Once your children have equity in your homestead, your property would then be subject to loss due to spousal issues. (i.e. divorce, death and general creditor issues caused by the child's spouse)

• Unnecessary Liens on Homestead

Once you add your children on to the title to your homestead, they can potentially borrow money against their equity in the homestead. Their equity becomes one of their assets. Technically, they can mortgage it, give it away or lose it to a creditor.

• Control

After you transfer ownership to your children, you no longer have 100 percent control over your homestead or your future decisions regarding selling or borrowing. This is a problem waiting to happen. Rarely, is the problem foreseeable. But, when your daughter-in-law tells you she does like the paint color on your house, you may not be too pleased. Sad, but true.

• Income Tax Issues

Before adding your children on to the title to your homestead, consider carefully the potential loss of the very favorable income tax rules about income tax basis adjustment. Under normal circumstances, when you die and leave your homestead to your spouse or children, they take the property with a new, adjusted income tax basis. This will result in saving tremendous income tax upon the sale of the property. Part or all of this benefit may be lost by transferring your homestead to your children while you are living.

While the above compilation is not an exclusive list, you get the idea that adding your children on to the title to your homestead is rarely a good idea. Please note that if the primary reason you are thinking about transferring your homestead to you children is to save taxes rather than probate avoidance, then there are several fancy techniques that make sense. These techniques are well thought out and quite sophisticated. By way of example, the Qualified Personal Residence Trust.

As always, seek the advice of knowledgeable advisors before simply deeding property to others to avoid probate. A gift under your revocable trust is often much wiser.

Go to www.probate-florida.com to read more about this subject.

Learn how you can have your cake and eat it too.

Ed Wollman is a FL Bar board certified wills, trusts and estates attorney with 26 years experience practicing in the state of FL.

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