WHY NOT TO MAKE YOUR CHILDREN JOINT TENANTS OF YOUR HOME

By Carina Lyn Roselli, Esq.

Sometimes people make well-intended but ultimately detrimental plans for their children to inherit their property. Those plans are usually rumored to be easier and less expensive, but in the end, those plans are often a terrible idea.

One technique parents often use to simplify the process of passing their home on to their children is to make them Joint Tenants of the home while they are still alive. The parents' intent is usually to set their children up to simply assume full ownership of the property. This seems like a great idea because it makes for a smooth transition and keeps the property out of probate. Both of those are true, but adding your children as Joint Tenants is still a terrible idea.

First, in Virginia, there is no need. Whether you die testate (with a Will) or intestate (without a Will), any real estate you own solely in your name skips probate and automatically passes to the heirs entitled to inherit your property. Meaning, even if your children are not Joint Tenants of your home, they will automatically inherit the property, smoothly transitioning and avoiding probate, so there is no need to add them as Joint Tenants.

Second, you put your home at risk. By adding your children to your home as Joint Tenants, you open it up to all of your children's liabilities and creditors. For example, if one of your children gets sued for a million dollars and loses—your home is considered one of that child's assets—which means it's up for the taking. Their debt could result in the forced sale of your home.

Third, your children lose out on a "step-up" in basis, causing them to pay higher capital gains taxes when they sell the home. Capital gains taxes are taxes imposed on the profit earned from selling an asset at a higher price than its original purchase price. They apply to the increase in value of stocks, bonds, real estate, and other valuable assets.

A "step-up" in basis is a tax rule that automatically updates the value of an inherited asset to its market value on the date of the original purchaser's death. Without a step-up in basis, your heirs will pay a higher amount of capital gains taxes when they sell the home because the home's value at the date of sale will be the value of its original purchase price.

For example, if you buy a vacant lot for $600,000, build a house on it, and later sell it for $800,000, you will pay capital gains taxes on the $200,000 of appreciation accrued since purchase.

Alternatively, if you buy a vacant lot for $600,000, build a house on it, and then die when the property's market value is $800,000, and your children inherit it via your Will or Trust, the tax basis in the home increases ("steps-up") for them to its market value on your date of death. This means, when that day comes, the tax basis of your home becomes $800,000 instead of $600,000. So, when your children sell your home for $900,000, they will only pay capital gains taxes on the $100,000 of appreciation accrued since your death.

The key point here is that your heirs must receive the property via inheritance. If they are already Joint Tenants of the property when you die, they won't inherit the property because they already own it. No inheritance means no step-up in basis. In that scenario, when your children sell the property for $900,000, they will have to pay capital gains taxes on $300,000 instead of $100,000.

Detrimental Planning

Planning shortcuts, like making your children Joint Tenants of your home, may seem appealing for their ease and lesser expense, but they may be unnecessary and very detrimental. If you would like to use the right strategies to create your life, legacy & estate plan, than visit my website at www.clrlaw.pro to send me a note or make an appointment to get started.