Surprises and Perils Await When Adding a Co-owner of Real Property in California, Post by Mark W. Bidwell

A sole owner of California real property can avoid probate by adding a joint tenant co-owner. This post identifies the surprises and perils of joint tenancy.

Surprises and perils of joint tenant owners in California

HUNTINGTON BEACH, CA, USA, April 16, 2021 /EINPresswire.com/ -- This post by Mark W. Bidwell identifies the perils and surprises of joint tenant owners in California. Adding a co-owner opens up the possibilities of many unintended consequences. These are: unfavorable tax treatment; exposure to the new owner's creditors; relinquished control to sell and mortgage the real property; and failure to transfer due to an unplanned order of death.

Joint tenancy is a form of co-ownership of real property where more than one person owns the real property and each owner has equal ownership. Every joint tenancy includes a "right of survivorship." On the death of one joint tenant, the deceased joint tenant's share of the asset transfers to the surviving joint tenant or tenants at the moment of death without the need for probate administration.

Title is cleared by recording an affidavit of death of joint tenant with a death certificate attached. Joint tenancy overrules wills and trusts. This straightforward change of ownership is fairly easy to understand and is low in cost.

But surprises await. The first is unfavorable tax treatment. The new joint tenant's ownership interest is increased to fair market value for the property tax base. There are two exceptions to this rule; adding a spouse or adding a child who lives with the parent.

The next surprise is an increase in capital gains tax. Lifetime gifts of real property transfer the original owner’s purchase price or “basis” to the new co-owner. Death transfers of real property receive an adjusted basis to fair market value as of date of death. For lifetime transfers of real property with a low purchase price compared to a higher current market value, the result is an additional capital gains tax on the subsequent sale of the real property.

The second surprise is the new co-owner. The new co-owner’s creditors can use the real property as a source of repayment. Additionally, the new co-owner must sign off on any sale or financing. The sole owner gives up control to the new co-owner.

The final surprise is an unplanned order of death. If the new owner dies before the current, then purpose of adding a new owner is defeated. Also, at some point, the surviving joint tenant will die, and the real property has to be transferred using the probate court.

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