# The Law and You

## Don't be Too Quick in Adding a Child to Your Deed

For most of us, our home often represents our greatest financial investment and asset. It also is a reflection on our life, our foundation and our stability.

To protect our home, we make sure it is in good repair and sealed from rain and snow. We purchase insurance in case of damage to it. We most often take title to it as husband and wife with joint rights of survivorship.

Taking title jointly with rights of survivorship means that the surviving spouse takes full title to the home immediately and automatically upon the death of the other spouse. Moreover, the home is not part of the deceased's estate, since it is automatically transferred to the surviving spouse as a matter of law. Therefore, no probate is required to transfer title to the surviving spouse.

In my law practice, I often encounter widows and widowers who want to add the name of one or more children to their deed. This usually occurs shortly after the death of a spouse.

The surviving spouse is accustom to having a second name on the deed. It feels safe and comfortable. It may also feel necessary to add another name to avoid probate.

However, there are risks and costs when you add your beloved child to your deed. These risks and costs relate to (1) fairness among your children; (2) capital gain taxes, and (3) potential judgments.

First, adding a child to your deed is equivalent to gifting half of your home to your child. Such a major gift, however, may give rise to complaints of favoritism. In effect, it may be difficult, if not impossible, to treat your other children equally, unless your entire estate is substantially greater than the value of your home.

Second, gifting half of your home to your child may result in unnecessary capital gain taxes. The half of the home that you gift to your child has the same value, or tax basis, as you have, which is usually your purchase price.

If your home was purchased many years ago, considerable appreciation is likely. As a consequence, when your child eventually sells your home, the half that he or she received as a gift will often be subject to capital gain taxes.

Third, by transferring half of your home to your child, you subject your home to potential judgments that may be entered against your child, through no fault of your own. This could result from collection actions against your child or from an uninsured or under insured accident caused by your child.

These costs and risks are easily avoidable. The capital gain taxes are totally unnecessary. If your home passes to your child through your Will, the tax basis is "stepped up" to the fair market value at the time of your death, not your original purchase price. This is one way to avoid the capital gain taxes.

By not adding your child to your deed, judgments against your child cannot attach to your home. It is that simple. And finally, by not gifting half of your home to one child, you can avoid criticism from other children that you are being unfair or showing favoritism.

If your home is not jointly owned with rights of survivorship, the transfer of your home after death must be probated, unless it is in a trust. But probating your Will is not expensive nor time consuming. Informal probate works simply, smoothly, and efficiently.

In balancing the costs of probating a Will against the costs and risks of adding a child to your deed, the scales tip heavily in favor of

probating your Will. You can avoid the capital gain taxes and the risks associated with such a transfer. More importantly, you can make sure that all of your children are treated in a manner spelled out in your Will.

The next time you are tempted or advised to add your child to your deed, first consult an Elder Law Attorney. Check your local Yellow Pages or contact the National Academy of Elder Law Attorneys at (520) 881-4005.