



Ask the Experts: The lowdown on joint tenant rules

Published: Wednesday, Mar. 9, 2011 -
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Paying off the mortgage; passing a home's title to an adult child. This week, those mortgage-related topics are addressed by estate planning attorney Lynn Dean, who answers readers' questions at Sacbee.com.

Q: To avoid probate, I'm thinking of putting my married daughter on my house deed as a joint tenant with right of survivorship. When I die, does my house become community property with her husband or does she inherit it alone? In case of divorce, would her husband have any claim on the house?

Lynn Dean: Let's suppose you create a property deed, naming your daughter as a joint tenant with right of survivorship. Believe it or not, you just made a gift of

"gift tax return," if the gift's value to your daughter is more than \$13,000. Any gifts below that amount do not need to be reported.

There may be no tax due, either by you or her, depending on the gift's value. Congress recently passed legislation that allows taxpayers to gift up to \$5 million total during their lifetime without gift tax consequences. That legislation is good only for 2011 and 2012, so my answer applies only if you make the gift in the next two years.

When you die, your daughter will receive your half of the property as an inheritance. Even though California is a community property state, if a married person receives a gift or inheritance, it remains his or her separate property, as long as they do not commingle it (i.e., put a spouse's name on it).

If your daughter keeps the house only in her name, it will remain her sole and separate property, even in a divorce. That means she must pay all house-related costs (property taxes, repairs, etc.) with inherited or gifted money kept in a separate bank account. If she later sells the house, her husband would not have a claim to the sale proceeds.

There are pros and cons to every tax situation. You should consult a tax adviser to decide if revising your property deed is the right choice.

Q: We are ready to pay off our home mortgage in one lump sum. The house is titled in our revocable living trust set up six years ago. What documents should we expect from the bank to

certify that it no longer holds a lien on the home's title?

Lynn Dean: I am glad you asked this question, as many people expect to receive a "deed" when they pay off their mortgage. When purchasing a home, title is transferred to the buyer by something called a "grant deed," which is signed by the seller. Most people do not realize that they own the house from the moment the grant deed is legally recorded.

If you did not pay cash for the house, you also would have signed a promissory note and a deed of trust. The deed of trust is not actually a deed, but a mortgage.

When you pay off the mortgage, the lender will create a document called a "deed of reconveyance." After that document is recorded, a copy will be sent to you. It's your proof that the mortgage has been paid off and that you own the home. In old movies, people then "burn the mortgage," which would actually be their deed of trust.

It is very confusing that we use the term "deed" in all these documents, but that is how property transactions are done in California.