

Ask the real estate lawyer

by Ilyce Glink & Samuel J. Tamkin

Q: If someone puts your name on a deed without your knowledge, is it legal?

A: Let's start with the concept of a gift. If I want to give you a gift, I can buy it and then give it to you. If you accept the gift, you become the owner of the gift.

If a person decides to give a gift of real estate to someone, they can purchase that property and deed it to someone else. But that alone will not be sufficient to transfer title to the property to the recipient. The person receiving the real estate as a gift must do something to accept it.

If someone simply records a document transferring title to a second person, the document would be legal but would not transfer ownership of that title without some form of affirmative acceptance by the person receiving the property.

In most states there are additional documents that are signed by the former owner of and the new owner of the real estate. If there is a purchase, the new owner receives the deed, obtains a mortgage, receives the keys and garage door openers and changes the utilities in the home to their own name.

If there is no form of acceptance, express or implied, the recipient will not have acquired title to the property.

Frequently, people ask whether they can quitclaim their timeshare interests back to the developer. If the developer does not accept the transfer, the owner will still be responsible for all of the costs and expenses associated with the timeshare property.

If, on the other hand, you're asking whether someone can put your name on a deed to try to transfer your ownership in a piece of property, that document would need your signature. If it does not have your signature, it would not transfer your interest.

If the signature is forged, you would still be the owner of the property but would have a mess on your hands trying to prove the illegal transfer, among other issues. For real property to be transferred, generally there must be a document that transfers title from the current owner to the new owner. That document must be signed by all owners of that property.

In some cases, a property can be transferred by court order or other legal mechanisms that would not require the owner to sign the deed. For practical purposes, however, most real estate transfers are undertaken with all of the current owners executing the document that will transfer ownership of real estate from them to a new owner.

Q: My parents want to put their home in my name, have me sell it once my new home is built, then use the money from the sale to add a room to my new home so that they can live with me and my family.

Is there anything preventing them from doing this because of their ages, and would any of these actions affect their Medicare benefits?

A: You need to know that if your parents will need Medicare benefits in the near future, the government has the right to look back on your parents' financial history and determine if any assets were disposed of that could have been used to pay Medicare.

Medicare can look back at their finances for up to five years to determine what assets have been given away to avoid using those assets to pay for their health care treatment.

If your parents want to sell the house, they can. If they sell the house, they probably won't have any federal income taxes to pay unless they have more than \$500,000 in profits. (If only one of your parents owned and lived in the house as his or her primary residence, the limit would be \$250,000).

If they transfer the house to you, you will have to pay federal income taxes on the difference between the cost of the home to your parents and the sales price of the home when you sell the home. That can be a substantial amount of money if the home has appreciated quite a bit over the years.

You should consult with an estate planner to evaluate your parents' estate, see how much money they have in their house, and figure out what kind of gifts they can give you to help you with the addition to the home.

You may find out that their estate isn't as big as you thought or that there are better ways of helping your parents in their current stage of their life than the plan you're currently contemplating.

(Samuel J. Tamkin is a Chicago-based real estate attorney. Ilyce R. Glink's latest book is "100 Questions Every First-Time Home Buyer Should Ask." If you have questions for them, write: Real Estate Matters Syndicate, PO Box 366, Glencoe, IL 60022.)

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