Real Estate Matters: Financial questions and answers

by Ilyce_Glink

Q: My father recently died and has left his California home to us through a living trust. When we transfer the real property out of the trust and into our individual names, will we have to pay capital gains taxes?A: My condolences on the death of your father.Typically, the estate would pay any federal estate taxes or state taxes owed on the property. What your father did by establishing the trust was allow you to bypass probate.When you inherit property, you inherit it at its current market value. So, let's say the property was worth $100,000 when your father died, if you turned around and sold it for $100,000, you'd owe nothing in taxes.If you hold onto the property for a year or more after his death and then sell it for $150,000, you'd owe long-term capital gains tax (up to 15 percent) plus state tax on the $50,000 profit.Please talk to an accountant or estate attorney for more details. You should also determine whether there is any need to take the property out of the trust. If you plan to sell the property, you can keep the property in that trust until the sale. If you need to have the property in each of your names, you should determine the reasons for the change and discuss your options with an estate planner or attorney.Q: My father-in-law recently passed away, leaving the home that he and my mother-in-law shared free and clear, without a mortgage.My mother-in-law is still alive. I want to know if we should have the house put in our names, or our children's names so that if she should have to go to a nursing home the state would not take the house.If she sells the house to us, what taxes would be due and who would be responsible for paying them? She wants to stay in the house as long as possible and pay taxes and upkeep.A: It's unfortunate that you and your spouse didn't have this conversation with your father-in-law before his death, because you would have had several options. Now, your options are more limited.If your mother-in-law "gifts" it to you, there are several important ramifications, according to Georgia Loukas Demeros, an estate attorney with Fagel Haber in Chicago."First, the property would be a gift and you would receive it at your mother's cost-basis, instead of at a stepped-up basis to the current market value upon her death. You'll have to file a gift tax return, which may or may not be taxable depending on her mother-in-law's remaining exemption," Demeros noted, explaining that each individual can give away up to $1 million tax free in gifts while alive, and pass down up to $2 million tax free in an estate.But because federal law now permits Medicaid to look back over 5 years to find assets that have been moved out of its reach, this gift might be unwound if your mother-in-law goes into a nursing home and Medicaid foots the bill."If one spouse is in a nursing home and the other is living in the house, Medicaid can't touch the house," she explained. "But as soon as the other spouse goes into a nursing home or dies, Medicaid can go after those assets to repay itself for the care." In other words, it may be too late for your mother-in-law to safely transfer the house to you or your children if she then needs nursing home care within the next five years.What could your family have done? If your father-in-law had left his half (or all) of the house to your children in his will, your mother-in-law could have either had a life estate, entitling her to live in the house until her death, or "rented" it back from you by paying the costs of taxes and maintenance to the property.For more details, and perhaps other options, please talk to an elder law or estate attorney.Â© 2007 Real Estate Matters - TMS