

Real Estate Matters - Financial Questions and Answers

by Ilyce Glink and Samuel J. Tamk

Q: I signed a contract to buy a home from a bank selling the home through its repossession department. However, I assigned the contract to another buyer. This buyer, in turn, assigned it to a third buyer. Now, the third buyer is preparing to close, but the closing documents are in the name of the second buyer only. We need the document to be in the third buyer's name only.

The closing agent is telling me we have to get the forms signed by the selling bank, but the person who needs to prepare the documents is out of the office. Do we need to get this form signed, or can someone else sign for the bank, like the bank's real estate agent, or do we not need the form at all?

A: You confused me a bit with the multiple assignments of your right to purchase the property. You, in effect, transferred your right to buy the property to another person, and that person transferred his right to another. If you didn't coordinate these transfers, the seller would be clueless about who is buying the property.

A closing agent should not prepare documents transferring the title to the third buyer unless the bank knows about it and gives the closing agent authority to draft the documents giving title to the property to the third buyer. As such, you will need the bank to draft the document to the third buyer, or have the bank authorize the closing agent to draft the document that way.

Keep in mind that the bank and closing agent need to make sure that if they transfer the property to the third buyer, neither the first or second buyer are going to come back and sue the bank for its failure to transfer title to either of them.

There are certain legalities that must take place to insure that the paperwork is just right to make sure that title runs from the bank to the third buyer.

The advice the closing agent gave you is sound and you should now try to get the bank to authorize the closing agent to transfer title to the third buyer. If the one person who can authorize that change in the documents is out of town, you may try to delay the closing until the person returns.

Q: When my parents got old, I moved into their house to take care of them. When they died, my brother inherited the house. He said I could continue living there until I died as long as I paid the taxes and maintained the home. However, he would not give me a "life estate" because he said he'd have to pay gift taxes. When I die, the house is his to sell or whatever. Why would he have to pay gift taxes?

The house is in Vermont and the Vermont Department of Taxes says I have to be taxed at the non-resident rate because my brother will not change the deed to include me as a having a life estate interest.

A: You've asked a good question. As a little background: When someone receives a life estate in a home, that home is theirs for all practical purposes. They have the right to use the house and, in many cases, do as they wish with the property as long as they live. The only thing the person can do with a life estate is sell the home or transfer it to someone else upon his/her death.

I'd suggest you talk to an estate planner to figure out a way to get you the life estate. Your brother might be right with respect to the tax consequences of the life estate gift in the home. His issue is not with the Vermont Department of Taxes, but with Uncle Sam. If you give someone a gift in any given year worth more than \$12,000, the IRS requires certain forms to be completed and this triggers certain tax rules.

Your brother seems to want to avoid this issue. The estate planning attorney might have some ideas about what can be done to get you the life estate and grant your brother (or his estate) the home upon your death. There are many ways of transferring title to the home to you as a life estate while not triggering tax consequences. Some of these issues can be addressed if title to the home hasn't yet changed hands from your parents to your brother.

You and your brother need to talk with an estate planning attorney to work through all the issues. If you don't know any, contact your local bar association for a referral.

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