

Real Estate Matters: Ask the real estate lawyer

by *Ilyce_Glink*

Q: My wife and I own a house that is surrounded by my mother-in-law's property. The acre lot was given to my wife about 8 years ago. She built a house on it before we were married.

The land is very dear to my mother-in-law and she does not want us to sell it. We need some money to complete a house we are building in a different location. My mother-in-law has offered to buy the house for about half of its appraised value. I would rather sell her half of the house for \$100,000 and stay on the deed with the agreement that we would not sell it until the mother-in-law passed on.

My mother-in-law would also like to deed her half to our two children. She would then rent the house. She and my father-in-law would keep the rental income, pay the property tax and any maintenance. I would just retain 50 percent of the value as it appreciates and possibly never cash it out. Can this be done?

A: Just about anything can be structured and worked out. Whether the structure you have come up with will be a good one, however, isn't clear from your letter.

You might want to sit down with an estate planner and determine whether your mother-in-law would be best off keeping the home in her name and including a provision in her will that would transfer her share in the house to your two children upon her death. From a tax perspective, everyone may be better off with an inheritance rather than a gift.

If your mother-in-law gives your children a gift of property today, she may have additional tax filings in connection with the gift to your kids, and your kids will get the half interest in the home at your mother-in-law's cost. This means that when your kids sell their share in the home, they may have a larger tax bill to pay.

If your mother-in-law simply passes on her interest in the home to your kids in her will, they would inherit the home at the home's value at the time of her death. That little change in planning could save your kids a substantial amount of money in taxes.

One other item: You stated that the house you built is surrounded by your mother-in-law's property. Do you have an easement over her land to get to your property? If not, you should immediately work with a real estate attorney to make sure your home has proper access. A written easement would guarantee that in the future, subsequent owners will be able to buy the home and have access to it.

Q: If a landowner deeds a fee simple title (warranty deed) to the local county road commission, and the commission does not accept the road at their Board meeting, who owns the property?

You should know that the deed to the county was recorded at the County's Register of Deeds. Since, the grantor is the only one signing the warranty deed, is the grantee obligated to accept it?

A: Some states have specific laws regarding the acceptance of roads by municipalities. In some cases, if the municipality does not act, the transfer of title to the municipality is not effective. In your case, if the county must accept the road grant, you will still own the road until the county accepts it. Any issues surrounding the ownership of the road may continue to be yours.

For further information, consult with a municipal law attorney in your area.

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