

When Inheritance Disputes Involve Real Estate

by Chad Brandel, Esq., Law & Stein, LLP



A number of parents strive to create an estate during their lifetimes to pass along to their children. Often times inheritable estates include a personal residence, a family vacation home, or maybe even an income producing property. The idea of passing along real estate to the next generation is an extremely generous gesture, and a way to try to ensure the wellbeing of generations to come.

Unfortunately, an attempt to transfer real estate or the end result of passing along real estate can create a number of unexpected issues if done without the consultation of an experienced estate planning attorney.

Property Tax Reassessment

Often times inherited properties were purchased years, even decades prior to them passing by way of inheritance. In California, we have property tax reassessment exemptions (Prop 58 and Prop 193) that exempt a property from being reassessed to its current fair market property tax value.

These exemptions only apply in circumstances where a parent transfers property to a child, or a grandparent to grandchild. Issues regarding the applicability of these exemptions arise when the parent/grandparent passes a property to more than one child/grandchild, and the children then transfer the property interest between themselves to try and create an equitable distribution of the estate.

A transfer between siblings is not an exempt event under the current laws and will trigger a property tax reassessment to the current value of the property.

In California, with the appreciating home values over the last half century, the property taxes can go from a few thousand dollars a year to tens of thousands of dollars a year. If there is not a trust in place to address this issue, a beneficiary can be left with a property they simply cannot afford. This leads to unforeseen demands and disputes between beneficiaries to resolve the issue.



Divided Interest In Property

What if the property is transferred to more than one beneficiary, all with an equal interest in the property?

That seems fair on the part of the transferring party. Although the overall transfer appears fair on its face, problems can quickly arise between the beneficiaries who now own the property in equal parts.

For instance, what if three siblings inherit a house from their parents, but one of the siblings either wants to sell or have nothing to do with the property. If the other two siblings are unable to purchase the share, the third sibling can go into court and force the sale of the property in order to cash out their interest. The family property is no longer in the family.

Property Not Titled In The Name Of The Trust

Sometimes a parent will transfer title to a property to one of multiple children as joint tenants with right of survivorship thinking the transfer is a way to avoid probate. If there is a written instrument such as a will or trust that states the property is to be transferred to all children equally, a big problem arises for the child who is on title as a joint tenant as they will likely argue the transfer of the property was a gift outside the will or trust.

If the matter cannot be resolved informally through mediation and negotiations between the parties, then the executor or trustee asserting a right to the property in the name of the estate or trust will have to file an 850 petition in probate court to try and have the property transferred back into the estate to redistribute according to the will or trust document. This matter can become a full-blown litigated lawsuit requiring discovery between the parties and a trial at the end to determine the rightful owners.

These actions are usually brought by the executor or trustee to protect the estate assets by bringing them back into the estate. These matters can become extremely costly, and the executor or trustee generally has the benefit of using estate assets to pursue the lawsuit. If the matter is not resolved, the use of estate assets by the executor or trustee to pursue the lawsuit means there is that much less money in the estate at the end of the lawsuit to distribute between all beneficiaries. Often times it can be a lose-lose situation for all parties if not resolved early on.



Property Transferred By One Spouse But Not The Other

Here in California, we live in a community property state which means nearly everything acquired by a married couple during their marriage is split 50/50 (unless it can be deemed a spouse's separate property such as inheritance received by that spouse or property held before marriage). Due to the

community property rules, one spouse cannot transfer or gift community property without the other spouse's written consent. If a spouse attempts to gift or transfer real property obtained during the marriage without the consent of the other spouse, this creates an invalid transfer which can lead to a probate lawsuit similar to the one described above.

Properly drafted estate planning documents can help anticipate and plan for scenarios like these to provide guidance in hopes of avoiding disputes and preserving properties for generations to come.

Should a beneficiary choose to raise a dispute over inherited real estate, our inheritance dispute litigation attorneys have extensive experience in handling these matters out of court, and in court when needed.



We look forward to serving you & wish you the best

We continue to work for new and existing clients during COVID-19 (coronavirus) while placing safety and health as a priority. We are happy to accommodate your needs, including Facetime, SKYPE and ZOOM for virtual, face-to-face connections. Contact us directly to speak with someone who can help answer your questions.

T (949) 501-4800

Or send us a private email at the link below and we will respond promptly:

info@lawandsteinllp.com

Visit our website for more information and to review our partner and attorney bios:

www.LawandSteinllp.com

The Law & Stein Newsletter is a monthly publication to share useful information with our clients in matters of estate planning, tax planning, inheritance dispute litigation, elder abuse, probate and business litigation, and premises and product liability defense.

LAW & STEIN LLP
2601 Main Street, Suite 1200
Irvine, CA 92614
info@lawandsteinllp.com

