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THE Advisor

INFORMATION TO TRUST; EXPERTS TO RELY UPON

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Real Estate & You



Whether for investment or personal use, the purchase or sale of real estate is one of the largest financial transactions most people will be involved in during their lifetimes. In a real estate transaction, only your attorney represents your legal interest in the transaction. Other involved individuals, such as your real estate broker, are presumed to be transaction brokers, who do not represent either party in a fiduciary capacity, according to Florida law, unless it is disclosed otherwise.

Problems in real estate transactions can be extremely difficult and expensive, if not impossible, to solve once a transaction has closed. Your skilled and experienced real estate attorney can identify potential problems in a transaction at an early stage. In addition to identifying and solving problems, your attorney will explain to you the legal significance of the various parts of the transaction. The most common question posed at closing is "what am I signing?" Many people go through a real estate transaction without knowing what they have signed and without the benefit of an attorney explaining the documents to them. Your real estate attorney will help you understand all aspects of the transaction.

Your real estate attorney must be responsible for the preparation and/or

review of the documents involved in a real estate transaction and advising and counseling you on issues and problems which come up during the transaction. This means that the attorney will prepare and/or review the purchase and sale contract and all documents necessary for the seller to

*The best time to
call your real estate
attorney is at the
very start. . .*

transfer clear title to the buyer. The attorney for the buyer will prepare and/or review the purchase and sale contract and the mortgage documents for the buyer to complete the transaction. Many documents, important to establishing and transferring clear title, should also be examined by your attorney, including: title insurance commitment, owner's affidavit as to liens and possession, judgment affidavits, special assessment letters, and survey. When representing a buyer, your attorney will also often review the financing documents, including the loan commitment letter, promissory note, mortgage, and other loan documents. In addition to preparing or reviewing documents, your attorney will

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help manage the transaction in coordination with the real estate broker, the mortgage broker and the lender. Managing the transaction means that your attorney will help make sure that all parties to the transaction are prepared for the closing.

Your real estate attorney will continue to represent you after the closing, to finalize all remaining details. Specifically, the buyer's attorney will review the final title insurance policy to make sure the buyer receives the appropriate coverage.

WHEN SHOULD I CALL MY REAL ESTATE ATTORNEY?

The best time to call your real estate attorney is at the very start, so the attorney can either prepare or review the purchase and sale contract. Having your attorney prepare or review the purchase and sale contract can help avoid problems which may not be easy to resolve once the contract is signed and accepted by the seller. Once a purchase and sale contract is signed by the buyer and seller, a legally binding contract exists. Without professional advice, it is not unusual for a buyer or seller to "contract" for future problems; problems that can be avoided before the contract is signed but become difficult or expensive to fix afterwards.

Sometimes attorneys are hired to simply attend the closing with the seller or buyer. While this may give the seller or buyer peace of mind, it is difficult for any attorney who only attends the closing to fulfill one of the attorney's major functions in a transaction: identifying and resolving problems before the closing.

Real estate closings can be confusing. Most documents are filled with "legalese." At Redgrave & Rosenthal LLP, we are familiar with all aspects of real estate transactions and closings. We understand the fine print and are very well prepared to help you understand what it is that you are signing. Buying or selling property will no doubt be one of the most important decisions you will make in this lifetime. Why buy or sell real estate without a real estate attorney?

The Intangible Tax is Alive and Well But you may be able to legally avoid it.

You may have read or heard about the proposed repeal of the Florida Intangible Personal Property Tax. The bad news is that the Intangible Tax will continue. The good news is that the Florida Legislature reduced the Intangible Tax from 1 mill (.001) to .5 mill (.0005) effective January 1, 2006. Therefore the tax on \$1,000,000 in assets subject to the Intangible Tax will be \$500 instead of \$1,000. A single taxpayer will be able to exempt \$250,000 of assets while a married couple filing a joint return can exempt \$500,000 of assets.

If you paid more than \$1,500 in Intangible Tax last year, please contact us to discuss how you may be able to legally avoid the tax.





Sherri Greenblatt Becomes Certified in Elder Law

Sherri A. Greenblatt, Chair of the Elder Services Group has become Board Certified in Elder Law. One of only three Board Certified Elder Law attorneys in the Boca Raton-Delray Beach area and one of just sixty-seven statewide, she has joined an elite group of specialists who devote their practices to serving the needs of our elder population. Certification requires extensive experience and demonstration of a highly advanced level of knowledge of the various subjects involved in Elder Law. In addition, applicants for certification are subject to peer review, may have their court files examined and must pass a day long exam. She has met the highest level of recognition by the Florida Bar for competency and experience of attorneys practicing Elder Law. As Chair of the Elder Services Group, she handles our guardianship, long term care, disability, care coordination, advance directive and Medicaid planning matters. We congratulate her on being formally recognized by the legal community for what we already knew - Sherri is an expert in her field.



A. Richard Redgrave Joins Firm

Redgrave & Rosenthal LLP is pleased to announce that A. Richard Redgrave has joined the firm as an associate in the Estate Planning Group. Richard grew up in South Florida and attended the Pine Crest School in Fort Lauderdale. He graduated from Dartmouth College in 2000 and earned his J.D. from the University of Florida Levin College of Law in 2004. After being admitted to the Florida Bar in January 2005, Richard was pleased to return to his long-time home of Boca Raton to begin his practice of law.

As an associate in the Estate Planning Group, Richard counsels individuals and families in the areas of estate planning, tax planning and advance directives. In addition to his work in the Estate Planning Department, Richard will also be coordinating the new Redgrave & Rosenthal Trust Funding Program and will be involved with asset transfers and asset protection.

Richard is a member of the Real Property, Probate and Trust Law Section of The Florida Bar, the Palm Beach County Bar Association and the South Palm Beach County Bar Association.



Carrie Kravitz Joins Estate Planning Group

We are pleased to announce that Carrie B. Kravitz has joined the firm's Estate Planning Group. With over twelve years of legal experience, Carrie's practice is focused primarily in the area of conventional and sophisticated estate, trust and business planning designed to encourage financial stability while minimizing taxation.

Carrie earned her LL.M. in Estate Planning from the University of Miami School of Law in 1997. She graduated cum laude from Temple University School of Law in 1993 and magna cum laude from the University of Maryland in 1990.

She is a member of the Real Property, Probate and Trust Law Section of The Florida Bar, the Palm Beach County Bar Association and the South Palm Beach County Bar Association.

How to Avoid Pitfalls of Joint Tenancy

You probably didn't give it much thought. You and your spouse purchased a home or a car or maybe opened a checking account. You took title of the asset in both of your names. As a result, you created a Joint Tenancy. Married couples are not the only ones who do this. Joint Tenancy is used by parents and their children, life partners and even friends. Joint Tenancy can be a useful tool in the estate planning process. However, for most people using it, there has been no careful consideration of the advantages and disadvantages of Joint Tenancy prior to selecting it as a form of ownership. The purpose of this article is to explain Joint Tenancy, some of its advantages and disadvantages and to encourage the reader to consult with a legal adviser prior to selecting it as a form of ownership.

Almost any type of property for which ownership can be established can be held in Joint Tenancy. Business and personal property including real property, fixtures and equipment, automobiles, bank accounts, treasury bills, notes and bonds are often placed in Joint Tenancy. There are three forms of Joint Tenancy ownership. A Tenancy in Common is one form of co-ownership. It is the ownership of an asset by two or more individuals together, on the death of one co-owner, his or her interest will not pass to the surviving owner(s) but will pass according to his or her will or, if there is no will, by state law determining heirs. Joint Tenancy With Right of Survivorship is another form of ownership by two or more individuals together. It differs from Tenancy in Common in that the surviving joint tenants immediately become the owner of the whole property upon the death of the other joint tenant. This is called a "right of survivorship." A Joint Tenancy with right of survivorship between a husband and wife is generally known as a Tenancy by the Entirety. Tenancy by the Entirety has some characteristics such as the inability of one joint tenant to sever the ownership and differences in tax treatment.

The main advantage to a Joint Tenancy is convenience. At the time of death of the first Joint Tenant in Joint Tenancy With Right of Survivorship and Tenancy by the Entirety, property passes to the survivor without the need for probate administration. On first glance, this seems like a good idea. However, the con-

sequences of Joint Tenancy can make convenience more trouble and more importantly, more expensive, than it looks. For example, consider this scenario:

A husband and wife own nearly all of their property as Joint Tenants With Right of Survivorship or Tenants by the Entirety. Upon the death of the first to die, the property passes directly to the surviving spouse. No estate tax is due on the value of the property regardless of its value based upon the unlimited marital deduction. Upon the death of the surviving spouse, if the total of his or her taxable gifts and net estate is less than \$1.5 million, the 2005 exemption from estate tax, no federal estate tax is due. Joint Tenancy has not resulted in unnecessary estate tax costs.

...only by a careful examination of your estate planning goals with your legal adviser can you properly determine if this form of ownership is right for you.

Consider the same example except that upon the death of the surviving spouse, the total of his or her taxable gifts and net estate is more than \$1.5 million. The federal estate tax rate on the amount over \$1.5 million is at least 41 percent. In this case, holding assets as Tenants By The Entirety or Joint Tenants With Right of Survivorship resulted in partial or complete loss of the unified credit of the first to die and the payment of unnecessary estate tax.

Another consequence of Joint Tenancy With Right of Survivorship or Tenancy by the Entirety is the loss of the "step up" in basis on the entire property upon death. When a Joint Tenant dies, only the deceased's ownership interest receives a "step up" in basis. The surviving Joint Tenant maintains the original cost basis on the property, resulting in a higher tax liability if the property is sold by the surviving Joint Tenant.

In addition to the tax disadvantages, there are prac-



tical disadvantages to the use of Joint Tenancy as well. Many people set up Joint Tenancy accounts with a minor. The problem is the account cannot be terminated when there may be a good reason for doing so, for example, if the adult Joint Tenant dies leaving the surviving minor as the sole account holder with the inability to manage the assets.

Also, assets passing by Joint Tenancy With Right of Survivorship may go against your well-crafted will and trust. For example, if you have three children who each receive one-third under your trust and you have an asset titled as Joint Tenants With Right of Survivorship with one child, you have no longer treated your children equally as the one child will receive the asset held as Joint Tenants With Right of Survivorship along with that child's one-third share of your trust assets.

There is a time and a place for the use of Joint Tenancy in the estate planning process. But only by a careful examination of your estate planning goals with your legal adviser can you properly determine if this form of ownership is right for you. In order to have all of your options available to you, consult with your legal adviser when you first contemplate joint ownership for your home, your new car or even titling your bank or brokerage account. It may prove very cost effective in the future.