

“Magic Words” That Can Affect Ownership

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“It may take a lot of time and money to correct unanticipated results of an incorrectly worded deed. It takes very little time and money to ask questions and to be aware of the above described types of deeds and “magic language.”

There can be drastic unintended consequences when a deed is prepared without the preparer asking the parties certain questions. Sometimes, the preparer simply does a deed based upon how the purchase contract reads, but often a realtor has prepared a contract quickly, so as not to delay getting a binding agreement, and the goal is just to get the names right. A buyer/grantee must be informed as to the choices available to avoid surprises years later.

The magic words that specifically indicate who owns property and how it is owned needs to be discussed. If John Smith and Mary Smith are married, the deed to the property should read John Smith and Mary Smith, “his wife” or “a married couple.” This is called tenants by the entirety. This is a specialized type of joint tenancy with right of survivorship reserved only for married people. This means each party owns 100% concurrently and a creditor of one spouse cannot attack the property. In some states, the words Tenants by the Entirety must be used, but in Florida, just the marital status needs to be indicated.

If John Smith and Mary Smith are not married, but just friends, and they want the one who lives longest to wind up with the property, their deed should read John Smith and Mary Smith, “joint tenants with right of survivorship,” often abbreviated as “JTWRS.”

If a deed says merely John Smith and Mary Smith without any qualifying language, each one owns 50 percent of the property as “tenants in common.” If one person dies, the survivor is not entitled to the property; he only owns a one-half interest. This most often occurs when people do their own deeds and are surprised when they learn that when one person dies, the deceased person’s half of the property must be probated and his or her 50% will go to that person’s heirs. Often it creates a very troublesome situation where one person winds up being partners with the other person’s family whether or not such was intended.

Often adult children want to be put on their parents’ deed as joint tenants with right of survivorship so that when their parents die, the property automatically becomes theirs, thus avoiding probate. What most people don’t realize that if this is done as “Joint Tenants With Right of Survivorship,” the parent will likely lose half of the homestead exemption and other real estate allowances may also be compromised.

Another possible and real complication I have seen happen is when a parent put a child on a deed with no “magic words” to avoid probate, and then when the child unexpectedly died, the parent could not sell or refinance the house until the child’s estate was probated. Making matters more complicated, the parent was at the mercy of the deceased child’s estranged spouse whose consent was needed to sell the property. Even though the child was gratuitously put on the deed many years before, the parent had to pay the estranged spouse one-half of the sale proceeds!

There are ways to transfer property and to avoid probate while keeping all exemptions, but issues of estate planning and implications of real estate law must be taken into account. Ask about the differences between a life estate deed, a ladybird deed, and a trust to accomplish your goals.

It may take a lot of time and money to correct unanticipated results of an incorrectly worded deed. It takes very little time and money to ask questions and to be aware of the above described types of deeds and “magic language.” Without legal representation, the right questions are often not asked and the person preparing a deed may not know the differences, the choices available, and your personal situation.

Let our family help your family, and remember that lawyers aren’t scary (even in October), but not speaking to a lawyer can wreak havoc with your intentions. Don’t hesitate to call for a free 30 minute consultation. **stb**