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REAL ESTATE: A MAJOR LIFE EVENT AND A MAJOR LEGAL EVENT

by Ron L. Meyers

Buying or selling a home is always a big life event, and it often occurs together with some other big life event – a marriage or divorce, a birth or a death, growing success in your career, or a retirement from your career. Each situation brings certain opportunities and concerns for your property and your other assets.

Marriage. If you are marrying for the first time, you may be sharing expenses as a couple. Building a life together is very rewarding, but financial interdependency introduces certain risks. If you have a mortgage, you may want to obtain life insurance to ensure that it will still be paid if one of you were to die. If you are marrying at a point when you already have a career and assets, you may want to consider how your property would be divided in the event of a divorce, and think about having a prenuptial agreement. When married couples acquire property together, the law assumes that each will inherit the property from the other upon death. But you may want to make an alternate arrangement for any number of reasons – if one of you has a familial connection to the home, or owns other property, or has exposure to significant business liability. If you are re-marrying, or marrying later in life, it can be a good idea to plan for circumstances of death or disability in a prenuptial agreement or in a will. If you are an unmarried or same-sex couple, then the legal status of your property can be less well defined, which can result in much greater tax exposure, and much greater difficulty if you ever separate.

Birth. When there is a new mouth to feed, financial security becomes more important than ever, so insurance on your life – and also for disability – are important considerations. It becomes important as well to make a will, or to revisit any will that you have made before. Does your will name your first child, but not your new child? Sadly, that happened to the late actor Heath Ledger. You also want to be sure that you have named guardians to care for your children if you and your spouse were to die, and to establish the appropriate documents to allow for temporary guardianship in the event of your illness or disability.

Divorce. In divorce, the disposition of the home is usually a central issue. Whatever is decided, it's important to follow through on the agreement and file the deeds and other legal documents that are needed to change the title of ownership. The departing spouse does not want to be on the hook for property taxes, and the remaining spouse does not want to be affected by the other's credit rating. It's also important to review your will after a divorce – even though the law provides for your ex-spouse to be removed as your beneficiary, you may not want this, and you may have many other plans to re-think as well.

Death. The disposition of property upon death must be coordinated carefully with the settlement of the estate. In some cases, estate property must be liquidated in order to pay estate taxes, and careful thought must be given to how the home will be handled. It's important to see that the estate is settled fully, with executor's deeds filed to transfer the property to the appropriate beneficiaries. Any unfinished business could hinder future transfers and can reduce the value. In one case that my office is handling, there is such a lack of clarity as to who should have inherited the property years ago, that no one knows who really owns it now – and no one wants to buy it since they don't know what they are getting.

Success. If you are scaling up, you may have financial concerns that you have not had in the past. Your estate may now be large enough to be subject to estate taxes. And if it's not now, it may be after a few years' appreciation on your new house. More sophisticated strategies of financial planning and estate planning may be in order, including alternative structures for owning your home. It may also be appropriate to think about planning for your business – for its growth and for succession when you retire, as well as ways to shield your home and other assets from business liability. If you are purchasing a vacation home or a property for rental, certain trust structures can greatly streamline your management of the properties and dramatically lower your tax liability.

Retirement. If you are down-sizing, you may realize considerable capital gains on the sale of the empty nest. You might want to see whether it's possible to match the gain with some deductions in the same year. Of course, it's also very important in retirement to work closely with a trusted financial planner, to ensure that your money is invested to suit your needs. A good lawyer can also help you to organize your retirement plans, and designate beneficiaries for them, to ensure that all your assets will pass according to your wishes when the time comes.

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There are a number of other nuances involved in owning and transferring property. Often, it is desirable to hold property in a trust, rather than in your own name directly. Sometimes, the acquisition or sale of a major asset creates an opportunity you can exploit – or a danger you can avoid – through smart planning. Your broker and real estate lawyer form the core of your team, but seek out the advice of a good financial planner to review your risk profile and liquidity, and a sophisticated estate planning lawyer to address your will, succession plan and tax exposure. Wise planning can make a major difference when you are doing a major transaction; having a full team of seasoned professionals will help you to cover all your bases.

Ron L. Meyers is an estate-planning attorney who uses legal planning, tax reduction structures, and charitable and strategic gifts to help clients make the most of their assets for themselves and their loved ones, during their lives and beyond. This article is presented for educational purposes only; it is not intended as, and should not be construed as, tax advice.