



Dresser drawer deeds: dangerous and foolish!

Many homeowners, trying to outsmart the system and avoid probate, have been known to execute a deed to their loved ones that is kept hidden, only to be produced at death.

Since probate can be expensive and time consuming, many property owners have been advised to draft a deed to their children. Instead of recording the deed

immediately, the deed is held until death and often left in a "dresser drawer," so a family member or representative can find it and record it later.

While this trick seems clever, and while it may not be technically necessary to record a deed to make it valid, a silent deed or pocket deed may not be valid if it has not been delivered to the new owner.

Elder law attorney Robert Anderson, as reported by Wealth



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■ See "DEEDS" p. 11

Deeds

Continued from p. 7

Management, lays out the dangers of silent deeds and why there are better options to avoid probate.

The first problem is that there is a chance the deed may be lost or destroyed. In this case the property would go to probate and the decedent may have no say in who receives the property.

Medicaid may create a different problem. If an elderly person who has executed a silent deed applies for Medicaid and fails to report ownership in the home, this omission may serve as the basis for a Medicaid fraud claim if the deed was not delivered to the recipient prior to death and reported on the Medicaid ap-

plication properly.

The bigger issue these days is the loss of the step-up cost basis for the property that would otherwise have likely eliminated capital gains taxes on the post-death sale of the property if the transfer is deemed to be a completed gift.

Ultimately, the old adage applies "if the trick is too good to be true, it probably is." There are many other very affordable estate planning options that will avoid probate and allow favorable basis treatment, such as revocable trusts and life estate deeds.

Silent deeds are rarely productive in the end. Before setting about on a plan for you and your loved ones, seek legal advice from a qualified elder or estate planning attorney.

Published in the Davis Wellness
Davis Clipper March 2016

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Provided by Rowe & Walton PC
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