



MEDICO & ASSOCIATES, LLC

ATTORNEY AT LAW

75 Holly Hill Lane, Suite 100 Greenwich CT 06830

Phone: 1 203 661 8151 Fax: 1 203 661-0357

www.MedicoandAssociates.com

TENANTS – IN- COMMON; ANOTHER ESTATE PLANNING NIGHTMARE

I have often cited issues relating to holding real property as Tenants – In- Common as it relates to the probate process. As you may recall from my previous writings on this topic, when one or more persons hold title to property in this fashion, and one of the titleholders dies, the decedent's share flows down to his heirs and assigns. This is different from holding property as Joint Tenants wherein when one owner dies, that ownership right passes directly to the other joint owners and the estate owns nothing.

As an attest to the difficulties of this situation is one of my current client matters, which is experiencing great difficulty with the other landowner. The facts are somewhat typical. The decedent owned a house with her boyfriend as Tenants- In- Common. They broke up years before her death, and she remained in the premises until her death, having had no communication with the ex-boyfriend for years. He has now surfaced from out of nowhere as a title holder and the appointed Administrator is dealing with significant issues in settling the estate.

The typical process used when distributing assets is for the Administrator/Executor to have the property valued or appraised. Those appraisals are provided to the court as an index and guide for the court so that when an application is made to sell property for a certain amount the Court can verify that the value of the proposed sale matches the appraised value of the property, and with any luck, even greater. Remember that the Administrator is obligated to protect the value of the estate for the benefit of the beneficiaries.

When dealing with a property held as Tenants-In-Common, the other landowners have a say in the valuation and the process. The court essentially has two options. 1) order the partition and sale of the house or 2) allow the other titleholders to buy out the estate. In the current scenario, the court has given both of those options to the parties, but the boyfriend has added several twists. He continues to object to the values placed by the independent appraisals, insisting that the property should be valued far less. This is a typical maneuver by titleholders who choose the second option so they can pay less to buy out the estate.

Other issues he has raised include his disapproval of proposed real estate brokers and their opinions as well as attempting to create unsubstantiated liens on the estate for monies he purportedly spent on the property including mortgage payments, taxes, and upkeep. Now the Administrator is occupied with researching these financial issues to determine what amounts the decedent and the boyfriend paid and calculating the values of the claims, if any.



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Of course the Administrator, who happens to be the daughter of the decedent is objecting to the claims made by the mother's old boyfriend, the motion practice is well under way and the costs are rising at a fast pace. Now the Administrators' life is consumed with the estate issues and a mini war has broken out amongst the parties.

How can this be avoided? A proper estate plan. Without a doubt, the property should have at least been transferred before death or the title should have been changed to joint tenancy. There are many situations wherein holding property as Tenants- In- Common is valuable and appropriate. This isn't one of them. If you are a property owner, you should be well aware of the type of ownership you have and consult your estate planner regarding the best ways to protect your estate's rights to the full value of your property. If you haven't done so before reading this, do it now! The example I just described is very real and very devastating.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.