Should I grant a deed to my children or other family member and not tell them?

31 December 2016

Probably not.

The legal books are filled with instances where people grant deeds and make gifts to family members and do not tell them of the gift before it transfers or even well after. This is usually a big mistake because there is not consideration that the asset given could be taken by the donee's creditors, which is something a good estate planning attorney would cause to be discussed before the gift was made. (Not getting good legal advice is usually part of the mistake.) One of the many apparent instances of this kind of mistake occurred recently in the Massachusetts bankruptcy court case titled *In re Amaral*.

In *In re Amaral* the debtor filed for bankruptcy and did not disclose any interest in his parent's property. Case No. 14-15382-JNF, (Bankr. Mass. 2016). The debtor obtained his discharge and the case closed in what appears to be what would have been a routine bankruptcy filing without any assets being distributed. However, after the case was closed the debtor's counsel learned, apparently from the debtor, that the debtor's parents granted a deed giving what is known as a remainder interest to the debtor and his sister in their property seven years before the debtor filed bankruptcy. A remainder interest is created and is the property interest that remains after a person reserves a life estate in the property, which is what happened here.

Debtor's counsel informed the trustee, and upon this knowledge, the trustee moved for the case to be reopened to seek approval to sell/liquidate the property. The case was reopened and the parties made their argument to the court, which ruled in favor of the trustee. The court found that when the debtor's parents, seven years before the bankruptcy was filed, transferred the contingent remainder interest in the property that it vested in the debtor at that time. In other words, it was a property interest at the time the deed was granted. The specific fact relied upon the legal language used in the deed, when interpreted properly under the law and history, that stated that the interest was to transfer then and not later when the parents died. The court found very important the fact that the deed did not make the grant contingent on the debtor being alive when the parents died. It is safe to say that only a trained legal professional in estate planning and/or real estate would have understood that the transfer was immediate.

The court decided this despite the fact the parents reserved a life estate in the property with the power to sell it. The fact that the debtor did not know of the interest or that the deed was not delivered to the debtor did not matter either. Neither did the fact that the debtor's parent retained the right to sell the property before they died. The bottom line is that the court found that legally the debtor obtained a property interest when the parents executed the deed and that property interest became property of the bankruptcy estate when it was filed. This resulted in the value of the debtor's interest in the real estate going through the bankruptcy liquidation process.

The author supposes that if the debtor had known of the deed that he would have relayed that information to his bankruptcy attorney, who, if he was worth his salt, would have probed the subject matter to decide whether the debtor's parent's deed transferred a gift that would be considered property of the bankruptcy estate. If the information was learned before filing, then it is safe to conclude the debtor probably would not have filed for bankruptcy. However, the debtor did not know of the deed before filing for bankruptcy and thus was not in a position to properly plan. This is one case that indicates that hidden gifts are not wise, proper legal advice should be sought before making a gift, and consideration of whether creditors will end up benefitting when a gift is made needs to occur.

In the event you are considering filing for bankruptcy and are concerned about its ramifications, feel free to give the author a call.

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