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Real estate without good estate planning - a troublesome problem - by Daniel Calano

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I spent the better part of a day this week working with attorneys on estate planning. I am clearly not an attorney, but I have learned much over the years while consulting on real estate, its potential, its future during the life of clients, as well as, shall we say, later.

My role has been to provide information, evaluation, potential uses, and how it all related to the owners' future plans. Attorneys, of course, are knowledgeable, and also skillful in protecting value, recognizing that much real estate is owned by multiple partners. Many of these partners are from the largest cohort population, known as baby boomers. These boomers own real estate as tenants-in-common, trusts, LLCs, limited partnerships, and over the years, have added or subtracted owners through marriages/divorces, children, negotiation, death etc.

In my experience, it is never a surprise to learn that the estate law, federal and state tax law, have changed since many "partnerships" had been created. I have seen ownership arrangements ranging from casual agreements to the most well-thought-out detailed legal agreements, appropriate for their time. That said, often agreements relied on friendship, trust, handshakes, as well as their legal authors, many of whom have retired with their important insights and memories.

One simple example I worked on, which became most complicated, was a thousand-acre historic farm in New Hampshire. In the beginning, three siblings bought the property a century ago, and wrote an agreement establishing ownership for the future. The three siblings held the same beliefs, goals and hopes for the property going forward. They had several children who had somewhat differing points of view, but still enjoyed the friendship and camaraderie of their cousins who inherited ownership. The cousins had around 12 children, most of whom now live in different parts of the country, have different financial needs, and different environmental goals for this historic farm. Long story short, the cousins drop in and out for an occasional family meeting, typically ending in disagreement and the threat of litigation. Sound familiar, or at least good analogy?

As you know, ownership has come a long way over decades of multiple ownership in a more complicated modern world. Documentation is more thorough, and changes with different ownership structures, inheritance and tax law. One important example relates to inheritance exemptions. Based on federal law in the 1990s, people with large estates were allowed to shelter up to \$26 million, before any federal estate taxes were paid. Many owners of real estate, whether it was a small office building or a big house, relied on the fact that much of their net wealth would not be taxed, or at least would be mitigated.

This shelter "sunset" in 2026 and automatically reverts to a very modest exemption going forward. A majority in the U.S. Congress needs to agree in order to extend the sunset. Clearly, given how Congress traditionally disagrees, sunset will go forward, thus impacting many plans for ownership of real estate. As a result, attorneys are busy creating new ownerships, new trusts, and early gifts to children in order to mitigate estate taxes. As you would guess, many real estate ownership

agreements are now more complicated, at worst no longer workable.

There are no clear-cut solutions to meeting all real estate needs going forward in this complicated world. Owners of real estate are very fortunate, typically have increasing values, good sources of retirement income, peace of mind regarding their valuable assets. Clearly, there are fluctuations over different periods. Overall, "it's as good as it gets." Or, it's good until it isn't. In any case, plan partnerships diligently, and never underestimate the unexpected consequences of unraveling difficult joint ownership.

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