



Planning for Transitions: Focus on Real Estate

I get asked all the time what do Certified Elder Law Attorneys do? In the broadest sense, what we do is provide clients with holistic advice to prepare for life's unavoidable transitions. Ideally, our clients contact our office well in advance of transitions; for example, considering a move from the family home to a more supportive environment. But most of the time we help people who need help right away. Either way, one of the most pressing concerns for our clients is what to do about the family home.

In financial terms, the analysis is simple. Your home is just another asset in your portfolio that you can value on a market, borrow against, sell or transfer to others. But we know that most people do not view their home like a bank account or stocks and bonds. It has an emotional value that cannot be quantified. It is the place you raised your family and celebrated holidays and important milestones such as birthdays and graduations.

The understandable emotional attachment to real estate can lead homeowners to ignore the traps for the unwary that lie in the transition of their home. What we see all too often is reliance on the seemingly well-meaning advice of family and friends who are not qualified to give proper guidance. Getting professional advice well in advance of an expected transition event will allow you to create a unique plan that meets your individual goals and can help to avoid the most common pitfalls: a loss of control, unintended tax results, and problems qualifying for public benefits.

It is vitally important to understand that once you give or even sell your home to a family member, it is no longer legally yours. Sometimes a parent transfers a home to a child with an understanding, implicit or explicit, that the parent will continue to treat the home as their own. An extreme and unusual result may occur if the parent and child have a disagreement, and the child seeks to evict the parent. More common results may include a child selling the property against the wishes of the parent, or a child losing the home due to some type of liability incurred such as a personal injury lawsuit or divorce. Additionally, if the child dies before the parent, ownership of the home may transfer to someone other than the parent, and if the parent is a surviving joint owner, an unintended consequence may arise where the parent will owe Pennsylvania inheritance tax on their own home.

A different set of issues arise when parents and children live together. Whether a parent moves in with a child, or a child remains at home, there are often complex circumstances that should be worked through before cohabitating. A family meeting is a must before embarking on any cohabitation arrangement. Disagreements occur when parents and children have not agreed (preferably in writing) to the terms of the living arrangement. Typical problems include misunderstandings over sharing expenses, what happens if the child's romantic relationships change, and what happens if cohabitation is no longer desired.

If the transfer of your home was made with the five years preceding the application for Medicaid benefits (the "lookback period"), a penalty is applied during which benefits will be denied. Instead of visiting a Certified Elder Law Attorney to analyze the family's unique circumstances and develop a plan to protect the home *and* pay for required long-term care, the family is now scrambling to undo the problem.

Most people are aware that the transfer of the home to a child has tax consequences. However, the tax consequences that people most often consider is the federal Gift Tax, which does not apply to most individuals. Though a parent will typically have report on a tax return the gift of the home if the value is in excess of the annual exclusion amount (currently \$17,000 per person and \$34,000 for a married couple) there will be no tax due unless the parent's gift is valued is in excess of the 2023 exclusion amount of \$12.92 million per person (or \$25.84 million total for a married couple).

The interplay between capital gains tax and Pennsylvania inheritance tax is not commonly understood and is another tax consequence that requires careful consideration. While a detailed discussion of these taxes could be a whole article in itself, the difference in the capital gains rate (20%+) versus the inheritance tax rate on transfers to lineal descendants (4.5%) means that you can have a dramatic tax result if you embark on a gift transfer of the home without proper advice.

As you can see, there are several factors to consider before you transfer your residence to a family member. There is not a one size fits all solution and doing what your neighbor did might not necessarily be the right option for you.

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