

# Pros and cons when transferring the house

By MICHAEL HOOKER

Many clients ask me, "Can I transfer my house to my children? I just read in the paper that my neighbor did it for a dollar."

The short answer is "yes, you can transfer to your children for a dollar." However, such a step should not be taken lightly, given that the house is often your most significant asset.

Transferring the house is often the solution to protecting assets and passing them to the next generation outside of probate court. The closest thing to a "silver bullet" in elder law/estate planning is for an elder to transfer the house to the children.

However, I always strongly recommend that the elder retain a "life estate." This retained life estate means the elder can live in the home for the balance of their life and cannot be evicted by the child and/or children.

Upon the death of the elder, the only required documents necessary to file are a death certificate and an affidavit that no inheritance taxes are due. These are filed at the Registry of Deeds. This is simpler, less expensive and quicker than passing the house to the children by way of a will.

## Why not to transfer

An elder can elect not to retain a life estate and instead transfer the entire title to the house. I do not recommend this as it leaves the elder vulnerable to changing circumstances.

What if you give the house outright to your daughter and then she predeceases you, leaving her estate to her husband? What if she is sued or divorces or becomes estranged from you?

Often the children are concerned about a parent giving them the house or other assets because the child wants to maximize student loans for his or her own children. Having more assets hampers student loan eligibility.

In this case it may make sense to transfer the house or other assets to an irrevocable trust so that the assets are not legally in the child's name. I have been loath to have elders transfer to such trusts because Medicaid has been disallowing them as an asset



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protecting strategy. There is a recent appellate case, however, which appears to undercut Medicaid's intransigence regarding the validity of such trusts.

There are also capital gains tax benefits to retaining a life estate. If you transfer your house to your children that you purchased for \$15,000 and they later sell it for \$250,000, they will incur a 15 percent tax, or \$35,250, on the \$235,000 gain. You can avoid this tax if you retain a life estate, because the children take the entire property at

your death and obtain what is referred to by the Internal Revenue Service as a "stepped up basis." They "inherit" it from you at the value as of date of death and pay no capital gains when it is sold shortly thereafter.

Transferring the house moves assets away from you. Should you be admitted long term to a nursing home, you have less money at risk of being consumed at \$11,000 per month on your care.

Be aware, however, that you need to stay healthy following the transfer. If you

and/or your spouse transfer your house and six months later have a stroke and are admitted long term to a skilled nursing facility, the state (Medicaid, also known as Mass Health) will deem you ineligible because you recently gifted significant assets.

The ineligibility period is currently five years. This look-back period could increase given the dire straits of our government and health care funding.

If you transfer the house while retaining a life estate and subsequently need to sell the house to move to an assisted living facility or mortgage the house to pay for care in your home, you will need your children's cooperation.

I am not a fan of adding a child as a co-owner on a deed. The dual goals and asset protection are better achieved by transferring the house subject to your retained life estate.

I am also not a fan of putting more than three children's name on the deed. Too many things can go wrong if you put seven kids on a deed.

Transferring your house or other assets can be a great idea. However, you should not do it lightly and should consult with an elder law attorney before doing so.

Attorney Michael Hooker's Northampton practice is devoted exclusively to elder's and their legal, financial and long term care needs.



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