

# Transferring the House

by Attorney Michael Hooker

Many clients ask me, “Why can’t I transfer my real estate (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 the elder’s most significant asset.

Transferring the house prior to death is often the answer to protecting assets and passing them to the next generation outside of probate court. In fact, the closest thing I know of to a “silver bullet” in elder law/estate planning is for an elder(s) to transfer the house to the children provided they retain a “life estate”. This retained life estate means the elder(s) can live there for the balance of their lives and cannot be thrown out by one or more of the children. Upon the death of the second parent/elder, the only things needed are a death certificate and an Affidavit that no inheritance taxes are due. This is a lot simpler, cheaper and quicker than passing the house to the children by way of a Will.

Alternatively, an elder can elect not to retain a life estate and instead can transfer the entire title to the house. I do not recommend this as it leaves the elder vulnerable. What if you give the house outright to your daughter and then she predeceases you, leaving her estate to her husband/boyfriend? Where does that leave you? What if she is sued or divorces?

Also, when you give the entire house to your children (without retaining a life estate) it may trigger capital gains taxes when the children later sell. For example, if you give a house to your children which you paid \$15,000 for and then they later sell it for \$250,000, they will pay approximately 15% taxes on the \$235,000 gain which equals \$35,250. You can avoid this tax if you retain a life estate, because the children would take the property at your death and obtain what is referred to by the IRS as a “stepped up basis.” They “inherit” it from you at the value as of date of death, so no capital gains when it is sold shortly thereafter.

Transferring the house also moves assets away from you. Should you unfortunately be admitted long term to a nursing home, you have less money at risk of having to be used for your care. In a sense, you have “protected” some of your nest egg. You must realize, however, that you need to stay healthy following the transfer. If you transfer your house and six months later have a stroke and are institutionalized, the state (Medicaid) is not going to allow you to be eligible because you just gave away significant assets. The ineligibility period is currently 5 years. It could increase given the dire straits that our government and health care funding is at.

If you transfer the house while retaining a life estate, and subsequently need to sell the house (say to move to an assisted living facility) you will need the children’s cooperation and signature on the deed. In summary, transferring the house can be a great idea. However, an elder should not do it lightly, and should consult with an elder law attorney before doing so.