Transferring Your Property - Choices?

Fact Sheet

As we age, we are advised to protect our assets, not only for our needs – but for the needs of our family as well. Because the home is one of the most important assets in our estate, careful consideration and special thought is required in analyzing of your home. In order to protect one's real estate, it is helpful to understand how the property is titled. The following are variations of property owner-ship:

Tenancy & Co-Owned Property

When two or more individuals co-own property, the relationship between owners is "tenancy." Deciding on the type of tenancy can determine how and whether the property will pass freely at an owner's death. Tenancy comes in three forms:

1. **Tenancy in Common** allows owners greatest flexibility. There are no survivorship rights under tenancy in common. Each owners' interest will pass at their death by their last will, or if no will, then by their states' inheritance laws.
2. **Joint Tenancy** must have equal ownership interests in a property. If one of the joint tenants die, their interest immediately ceases to exist and the remaining joint tenants own the entire property. The disadvantage to both Joint Tenancy and Tenancy in Common is that creditors can attach the tenant's property to satisfy debt since the interest is available to the owner.
3. **Tenancy by the Entirety** is only available to married couples and is based on the societal value of protecting the family. One tenant is unable to convey interest on their own. Upon the death of a spouse, the interest automatically passes to the other spouse. The creditors of one spouses are unable to attach the property or force its sale to recover debt unless both spouses consent.

Medicaid Eligibility

Medicaid, the government benefit program which often provides long-term care and medical costs, has special rules covering the availability of homestead property to cover care. Under Medicaid's rules, a home is an exempt asset as long as the applicant or the spouse resides in the premises, and its transfer can be exempt from the normal five year look back period resulting in ineligibility if transferred to one of the following:

1. A spouse.
2. A minor (under 21), or a disabled child of the individual.
3. A sibling with an equity interest in the home who resided at the home at least one year before institutionalization.
4. A son or daughter of the individual who resided in the home for at least two years, prior to institutionalization, and provided care to keep the person from becoming institutionalized.

Medicaid now limits equity value of the home to be exempt, and changes with the cost of living (2023 - $1,033,000). A house or houses with a value in excess of this equity cap can result in ineligibility for Medicaid coverage.

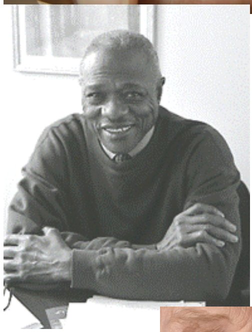
Tax Considerations

Any transfer of a large asset, such as a valuable home, has tax implications. When considering a house transfer, **Capital Gains Tax, Income Tax, and Gift Tax must all be fully addressed and reviewed with your financial advisor or accountant.**

Protecting Your Property

Before transferring your home to your heirs, or placing the title into a Trust, one should consider:

- Exploring the pros and cons of retaining a Life Estate and/or retaining a license to occupy the home.
- Considering the impact on any real estate taxes, such as the New York State STAR or Veteran's exemptions.
- Planning early to avoid rushed and forced decisions.



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