

Transferring Property Prior to Death

2021

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Sometimes, as people approach the inevitable, they start trying to get their things "in order". They may even have a will, but they decide to transfer title to real estate prior to their death which could be an unnecessary expense for the would-be heir.

Generally, when property is passed through direction of a will, the heir will receive a stepped-up basis which means that the fair market value of the property at the time of death becomes the cost basis for the heir. If the property were sold for that fair market value, there would be no gain and no capital gains tax due.

However, if the property is gifted prior to death of the donor, along with the title to the property comes the cost basis of the property. The transfer of title does not trigger the capital gains tax but when the property is sold, the gain is calculated by subtracting the basis from the sales price leaving a capital gain subject to tax. In other words, the person receiving the gift does not get the stepped-up basis.

There certainly can be advantages to transferring the property prior to death. It completes the transfer without having to wait for the death and bypasses the probate process that might be required to settle the will. Another advantage to the donor may be to remove the property from the owner's name which could lower the taxable estate.

Some owners may transfer title prior to death to qualify for Medicaid. The value of the asset may make them ineligible. It may trigger a Medicaid Transfer Penalty when the gift is made within five years and the basis of the property is less than fair market value.

Once a property is deeded to someone, the donor loses control of the asset and it cannot be reversed. Depending on the value of the estate, there could be gift or estate tax implications. As

mentioned earlier, it may have capital gain tax consequences for the donee when they dispose of the property.

If the person receiving the gift has creditors or judgements, the gift becomes an asset subject to those creditors or judgements.

Even though the mechanics of transferring title to a property is simple, there are many things to consider for both the person giving the property and the one receiving it. Consult an attorney and tax professional to determine the best-informed decision available. There could be other alternatives that would better serve your situation.

Let me know if you have any questions or need additional information. If you would like for me to help you determine your home's current value, I offer this service free of charge.



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