

# **Giving Away Your Home: A Trap for the Unwary**

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Like many other people, you may be thinking about giving your home away now that you are older. There may be several reasons why you might consider giving your home away:

- you want to avoid probate
- you want someone else to take responsibility for the upkeep of the property
- you want to help a family member
- you fear you can no longer live alone and want someone to stay in the home with you; or
- you worry that you may have to enter a nursing home someday

If you are one of the people thinking about transferring your home, here are some things to think about first.

You should never sign away your home ownership without first getting advice from an attorney. There are many risks in transferring the home to another. You should talk to an attorney who concentrates or is knowledgeable in elder law or estate planning.

This brochure gives general information about the risks you face if you transfer your home.

## **What happens if I transfer my home?**

- You will lose control over the use of your home and property. You will have no say in whether the property is sold, mortgaged, taken by creditors or used for a purpose that you don't like.

- You will lose the right to live in the home or somewhere on the property. You will lose the right to rent the property or otherwise occupy the property.

- You may create problems with creditors. You may get in trouble if you have a lien on the property or if you file bankruptcy. If you transfer a home or other property, and as a result, a bank or other creditor is unable to collect a debt, the transfer can be canceled. In some circumstances, such a transfer is considered fraud.

- You may lose your Property Tax relief. If you are over age 65 or disabled, you may have the right to some relief in paying property tax under state law. If you add another person's name as co-owner of the property, that person's income will be counted along with yours. The increase in income may cause you to lose your eligibility for tax relief. Of course, if you are no longer the homeowner, you would no longer have to pay

the taxes. The new homeowner will not have a right to relief from these taxes unless he or she can qualify.

**If your get an SSI check:**

Generally, there is no penalty for giving assets away when you are receiving SSI. However, giving away ownership of a home place may cause you to lose SSI benefits, if you still live in the home and do not pay rent to the new owner.

If you give your home to someone who receives SSI or other government benefits, your gift may cause the other person to lose benefits, if he or she already has a home. (Owning property, other than your home, can affect eligibility for SSI, Medicaid, and food stamps.

**If you have Medicaid and live in a nursing facility or if you live in a nursing facility and plan to apply for Medicaid within the next three years:**

There is a Medicaid penalty for any gift or transfer “for less than fair market value.” The state checks to see if transfers of any property (including a home) occurred during the three years prior to entering the nursing home or applying for Medicaid. The time is five years for transfers involving trust property. A transfer made that is improper for Medicaid purposes may result in the denial of Medicaid for a certain amount of time (depending on the amount of the gift or transfer).

There is NO Medicaid penalty for a:

- transfer between spouses
- transfer to a disabled or blind adult child, or to a child under age 21
- transfer to a brother or sister who is a co-owner and how has lived in home at least one year
- before you go into a nursing home
- transfer for fair market value
- transfer to an allowable trust

Taking your name or any co-owner’s name off the deed is also considered a transfer that may be penalized under the Medicaid program.

Sometimes, the transfer penalty may be set aside if the state finds that the penalty will cause “undue hardship.”

There may be tax consequences if you give your home away. You may have to pay a gift tax. The gift tax, generally, applies to the transfer of a present interest. Sometimes, the first \$12,000 of a gift is exempt from taxation. There may be a \$24,000 exemption if gift is made by married couple.

The person who receives the gift may have to pay more capital gains tax if he or she sells the property at a later time. There are many factors which determine whether a capital gains tax is owed and how much the tax will be.

An agreement to exchange your home for in-home care is risky and should always be reviewed by an attorney. Always get the advice of an attorney if you are thinking about making an agreement with a person to take care of you. This is especially important if you plan to give the caretaker the deed to your home or a promise that the caretaker will inherit your home. These arrangements are dangerous and may cause many problems. The agreement may also affect Medicaid eligibility and tax liability. Never make this type of agreement without the help of an attorney who is knowledgeable in this area of the law.