

## Dealing with your home as part of your estate

For many people, their home is the single largest asset they'll have to pass on to their heirs.

A home can easily push the value of your total estate over the \$1.5 million estate-tax exemption limit. Its value can also create a hefty capital gains tax burden on your heirs.

### By the numbers

- A home can easily push the value of your estate over the **\$1.5 million** estate-tax exemption limit.
- With gift-tax exclusions, you may be able to offset the value of your home by up to **\$44,000** in one year.

Your home presents some very delicate estate-planning issues that less tangible assets — such as stocks or mutual funds — do not. Most obviously, you can't simply divide your home three ways to provide equal portions to all your children.

Here are some possibilities you have when dealing with your home that you should discuss with your tax and financial advisers.

### Stay in your home

If you're looking for a compelling reason to stay in your home until you die, the potential impact on your estate and your beneficiaries is a very good reason — provided your estate is below the \$1.5 million estate-tax exemption.

If you live in your home until death, your beneficiary will receive the home on a stepped-up basis to its current fair-market value. In other words, your beneficiaries won't be subject to capital gains tax on the appreciation your home has seen since the

time you bought it. And if your estate is below the \$1.5 million estate-tax exemption rate, the beneficiary will also be exempt from federal estate taxes.

### Open a life estate

If you prefer to stay in your home, another possibility to consider is a "life estate." This is a form of joint ownership you can set up between you and a child. As the holder of the life estate, you can stay in your home until death. Your child will have a remainder interest in the property but cannot take possession until the end of the life estate (*i.e.*, your death). Your child will receive the house on a stepped-up basis, which means he or she will not be subject to capital gains taxes on the rise in value of the home from the time you purchased it.

There are a number of downsides to a life estate that you'll want to consider. One consideration is a loss of control. If you decide later you want to sell the home and move out, you

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### Key points

- A home is the single largest asset many people will have in their estate.
- A home presents some difficult estate-planning issues that other assets do not.
- Work with your tax and investment advisers to develop an estate-planning strategy that works best for you and your heirs.

will need the cooperation of your partner in the life-estate arrangement. And while the home will not be subject to probate, it will be included in the value of your taxable estate.

### Transfer ownership

Transferring ownership to a child is a popular solution because it's easy and because it takes the home out of probate. But there are two major issues to consider.

One, you give up control of the property. If your child wants — or needs — to sell it for any reason, you have no legal say over the decision.

Two, the beneficiary who receives the home will not get it on a “stepped-up” basis. This means that when the beneficiary sells the home, he or she will have to pay a capital gains tax that will be based on the value of the home when it was originally purchased.

Some people want to live in their home while transferring ownership to a child. This can be a tricky proposition. Basically, the IRS will insist that you sell the property to this child at full-market value, rent out your space at a prevailing market price and continue to use it as your primary residence.

The IRS will also demand that the full value of the home — at the time of your death — be included in your taxable estate. In other words, your beneficiaries won't get many of the same tax advantages they would have received had you lived in your home and kept it in your name until the time of your death.

### Gift the home to a child

Giving your home to a child or other beneficiary may seem like a sensible solution, especially if you have multiple homes or if you plan on moving out for any reason.

However, gifting comes with some pretty strict laws. For example, you will have to dip into your gift tax and estate-tax exemptions (\$1 million and \$1.5 million, respectively). You can offset the amount of the gift by using your annual \$11,000 gift-tax exclusion. You and your spouse can actually each give this amount to your child and to his or her spouse. Therefore, you can actually gift up to \$44,000 per year without paying gifting taxes.

However, your child will not get the advantage of receiving the home on a stepped-up basis. This means that the capital gains taxes will likely be higher when he or she finally sells the home.

### Put the home in a qualified personal residence trust (QPRT)

This is an option to consider for an individual with a sizable estate (several million dollars). It allows you to make a gift of your home and to continue living there — while reducing the value of your taxable estate.

Essentially, the home is put in an irrevocable trust for several years in the name of a beneficiary while you continue to live there. The IRS then makes a calculation that values your right to live in that home over the period determined by the trust — generally, this value is far below the fair market value of the home.

When the trust expires and the property is transferred to the child, you can move out or pay rent to the child. There is an obvious loss of control with a QPRT but also the potential for major tax savings. However, if you die before the trust expires, the entire value of the home will be included in your taxable estate.

### For further information

Read *Protecting the House*, by Harry S. Margolis at [www.elderlawanswers.com](http://www.elderlawanswers.com)

Contact your investment professional for more information.

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HP-EP-HOME-FLY-2/04