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Today's Business: To give or not to give, that is the question

Christine M. Tenore

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Christine M. Tenore; Contributed photo

Your neighbor did it. Your best friend's uncle did it. Your husband's co-worker did it. Should you do it? Should you transfer your house to your adult children?

In an effort to avoid the "the government taking my house," many people consider transferring the title of their home to their adult children just in case they need long-term care in the future. This often seems like a simple solution — take the property out of their names, put it in the kids' names and the government can't get it if the parents need to apply for Medicaid. What could go wrong?

There is no one answer for everyone. Whether to transfer or not is a decision that should be based on upon your health, your finances and your age, as well as your children's ages, health and financial stability, among others.

What are the considerations for the parents? When you give a gift during your lifetime of an asset over the federal exempt limit of $15,000 a year, you will be required to file a gift tax return. Currently, the state gift tax exemption is $7.1 million, and federally, $11.7 million. Therefore, if the value of your house is less than that, you will only be required to file the gift tax return, but no taxes will be due.

The transfer is accomplished with a simple Quit Claim Deed, which identifies the parents as the grantors and the children as the grantees. The deed is recorded on the land records in the town where the property is located. In addition, there are minimal recording fees.

Money is freedom and independence. If you give away your house, you lose the ability to take equity out of it in the future. We are all living longer. What we put away in our retirement accounts may not be enough to support our life style as we age into our 90s. You may need (or want) to mortgage or even sell the house and use the cash to travel, maintain your lifestyle or fund other activities.

How well do you trust your children? Are you comfortable that their marriages are intact or their business ventures safe? Do you trust that they won't want to sell the house after you transfer title to them? This can happen. To minimize that risk, I suggest that you and your children sign a contract together stating that you have the legal right to continue to reside in the house, continue to pay all of the expenses and the children agree that they won't sell the house or, if they do, they will use the proceeds to purchase another residence for you.

Remember, if your children own your house, it will be subject to your children's debt collectors, bankruptcy proceedings and even divorce settlements. You could lose your house to your children's creditors. Life happens. Even if your children are model citizens, you don't know the future and what it might bring. Did anyone anticipate that the coronavirus would bring the world to a halt?

And if within five years you unfortunately need Medicaid, you may be subject to a period of ineligibility for the "invalid transfer." This means that just when you most need government assistance to pay for your costs of care, you will not be eligible for benefits until a penalty period has expired.

And what should your children consider?

They may be subject to capital gains taxes when they sell the house and lose the opportunity for a step-up in cost basis. This may be a serious consideration if the parents purchased the house years ago for a fraction of the current value. When a house is transferred during lifetime, the children take on the parents' cost basis in the house.

The "basis" is the price that you originally paid for the house plus capital improvements. When the children sell the house, the difference between the selling price and the basis is subject to capital gains taxes of up to 20 percent. If the parents live in the house and then sell it during their lifetime, they can each take advantage of the $250,000 exclusion offsetting the capital gains exposure. Alternatively, if the children inherit the house after the parents pass away, they take the basis of the house valued at the date of death, rather than the original purchase price, usually eliminating or minimizing most capital gains tax liability.

Whether to transfer your house to your adult children is not a "one-size fits all" decision. A review of the potential personal, monetary and tax considerations would be helpful. The decision should be made only after very careful reflection, bearing in mind the consequences for both parents and the children.

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