



BY CAROL ABAYA
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THE SANDWICH GENERATION

Question: "We are in our 80s, still basically healthy, and active in our church's services and activities. Friends of ours have put their house into their eldest son's name. They say that then the government will pay for nursing home care. Should we do the same? We have four children, two sons and two daughters, and seven grandchildren. Our friends have three sons."

Answer: NO! DO NOT transfer! One of my carved in stone mantras! Keep the house deed in your names. I am not a lawyer, but.... I am a retired real estate broker and familiar with both real estate law as well as elder law.

By turning over their house -- probably their biggest asset -- to the eldest son, your friends have put themselves and their other children in a negative position. The following repercussions would also be valid for you and your wife.

1. Your friends' other two sons will not benefit from the sale of the house even if the couple's wills state that all children should share assets equally. The eldest son has the house and does not have to share. Ownership super cedes wishes stated in a will.

This same principle is applicable to your situation. Your eldest -- or whichever child's name is put on the deed -- gets all, and your other children get nothing.

2. If the transfer is a “gift,” then federal gift tax rules apply.

Because a person can only gift \$13,000 a year tax free to any one person, such a gift will impact the amount of the estate that can be transferred tax free.

Various forms have to be filled out and filed with the government.

3. The transfer -- even if a gift -- will not necessarily allow your friends to qualify for Medicaid, the government program that pays for long term skilled nursing home care for those with few assets and low income. (Medicare does not pay for long term nursing home or assisted living care.) The

Medicaid eligibility criteria are changing, but currently there is a five-year look back period in relation to gifts.

4. If the son, now the owner of the house, develops financial problems and has to declare bankruptcy, the house will be taken by the court/creditors. Your friends --- or you -- will lose your home and be forced to move.

5. If the deed holder dies, the house will be part of his estate and an in-law gains control. There have been numerous cases where the daughter-in-law, eg. has forced the elder from the house.

6. Senior citizen tax abatements and credits will not be available to the adult child owner. So, the full amount of real estate taxes will have to be paid. Discounts on utility bills might also be voided.

7. If the house needs to be modified to handle the elder’s physical handicaps, grants and government discounts will not be available.

8. If the elder wants to move to a retirement community or assisted living residence, the elder has lost the key asset which could be sold to enable the move. There have been cases where the adult child has refused to sell. In several cases, the mother had to sue to regain control of the house/asset.

When several children are involved, the situation is complicated, especially if there are substantial other assets. Various children can lose out when beneficiary designations are made by the elder by P.O.D. (payable on death) or I.T.F. (in trust for) bank or investment accounts. The asset (money) goes to the P.O.D. or I.T.F. recipient -- in spite of a Will that says assets are to be divided equally.

Today with multi-generational households, there are other considerations that need to be dealt with. If an adult child lives with the elder and is the caregiver, that child can be given "life rights" and be allowed to live in the house until that person dies or moves out. Only then can the house be sold. This situation works only if that adult child has the income to pay appropriate bills, taxes and maintenance.

Preserving one's home as an asset and lifestyle should take precedent in any estate planning process. A qualified elder law attorney should be consulted. Avoidance of complicated transaction details should be #1 priority.

The simpler, the better, in my opinion.

ALERT: Just last week, on TV was a story about a 98-year-old woman who had turned over her house to one of her sons. Now the greedy son wants the house and to kick his mother out. The son is saying his mother is demented, lives in filth and can't take care of herself. This is not true. Now the woman will have to go to court to be able to stay in her home of 50 years.

Next week starts a two-part series on nursing homes and medicaid.

*The Sandwich Generation is reader interactive and questions are welcome. Contact **Carol Abaya** via her website*

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Abaya does not respond to comments posted after the article.

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