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Maine Care & Deed Transfer Options

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Many people think they are going to lose their home to the nursing home if they require long-term care. It doesn't actually work that way.

In the State of Maine, if you need nursing home care and cannot afford it the State will pay for your care if you have approximately \$10,000 in assets (\$130,000 for a couple). This includes all your assets, even assets in a Revocable Trust. If you own your house it is exempt (up to approximately \$850,000 in equity). If you have more than this, the State will not pay for the costs of your long-term care until your assets reach these levels. You will have to pay for these costs on your own. Once you have spent down all your assets to the appropriate levels, the State will pay for your costs of care. In order to qualify for Maine Care, the State will carefully audit your finances for a five-year period. If you have any transfers (i.e., gifts to children) during this five-year "look back" period, they will "penalize" you by adding that gift back to your asset tally. They will "claw back" all gifts during this time including a \$500 check to a child or the value of a house if the house was given away. After the five-year period, these transfers are considered out of reach. However, if you go to the nursing home, incur a bill and then die, the State is able to attach a lien to your estate, which could include your home. They are keeping track of every penny they spend on you and when you accept money from the State to pay for your nursing home care you agree to pay them back!

The nursing home won't take title to your home. If the house is sold when you die, the State will place a lien on your estate and your heirs (i.e., children) will have to pay off that lien. Because you would not be eligible for Maine Care unless you only had your home as an asset, this lien is often paid at the time of the sale of the home.

People often come to me and say, “I want to give my house to my daughter so the nursing home won’t get it.” What they really mean is “I want to give my house to my daughter so Maine Care will not be able to take any of the proceeds of the home when I die.”

There are many ways to give your house to your children if that is your goal. I’m going to discuss some of the advantages and disadvantages of the different options.

OPTIONS

- 1. Joint Tenancy**
- 2. Outright gift to children**
- 3. Outright gift to children, retain life lease**
- 4. Irrevocable Trust**

1. **JOINT TENANCY** – add child (children) to deed as Joint Tenants

Joint tenancy is a great option for people who want to protect their home but maintain maximum flexibility.

Advantages

- Inexpensive. Only requires a deed.
- Maine cannot seek recovery for Maine Care lien on surviving joint tenants when institutionalized parent dies.
- You may still be able to refinance and take principal out as long as children agree. Sale of property is not an issue (as long as children agree to it).

Disadvantages

- **WARNING:** Children are now on your deed! Their lives (i.e. divorce, bankruptcy, credit problems) can affect you. If you want to sell or mortgage the property and they don’t, you are stuck.
- Children could break the joint tenancy and transfer their interest to someone else.
- If children don’t get along or get into a disagreement, they are stuck on the deed together with no way out except a partition action. The more children you have the harder it is for them to agree and get along. For example, I would not recommend putting more than two children on a deed.
- If they predecease you, you will own property outright again and Maine Care look back period will be reset.
- Step-up in basis is not as favorable as other options. See capital gains discussion below.

2. **OUTRIGHT GIFT TO CHILDREN**

Advantages

- Inexpensive. Only requires a deed.
- Maine cannot seek recovery for Maine Care lien when institutionalized parent dies. Asset is completely out of your name and no transfer penalties after look back period is passed (currently five years, 60 months).
- It is not an issue if children predecease you.

Disadvantages

- You no longer have control. Children now own your property. They can sell, throw you out, etc., and are free to sell property at any time without your permission.
- Children's lives (i.e. divorce, bankruptcy, credit problems) can affect you.
- You cannot refinance.
- Children may face capital gains tax issues whether you are alive or dead. See discussion below.
- If children don't get along or get into a disagreement, they are stuck on the deed together with no way out except a partition action. The more children you have the harder it is for them to agree and get along.

3. **OUTRIGHT GIFT TO CHILDREN, RETAIN LIFE LEASE** - Deed to children, take back life lease in property

Advantages

- Children cannot throw you out or sell property out from underneath you.
- Maine cannot seek recovery for Maine Care lien when institutionalized parent dies. Asset is completely out your name and no transfer penalties after look back period is passed (currently five years, 60 months).
- It is not an issue if children predecease you.
- If capital gains tax is an issue, children will receive step-up in basis when you die (see discussion below) which could result in substantial income tax savings for them.

Disadvantages

- Children now own your property. You are completely out of control. *BUT* they cannot sell, throw you out, etc. They are *not* free to sell the property at any time without your permission.
- Children's lives (i.e. divorce, bankruptcy, credit problems) can affect you.
- You cannot refinance.
- If you sell house while you are still alive children may face capital gain tax issues. See discussion below.

- If children don't get along or get into a disagreement, they are stuck on the deed together with no way out except a partition action. The more children you have the harder it is for them to agree and get along.

Bottom Line: Life Lease is a great option for parents with one child or kids that get along. A Life Lease retains your right to live in the house for the rest of your life and has minimal capital gains tax issues for kids if they sell after you die.

4. IRREVOCABLE TRUST

Advantages

- Children cannot throw you out or sell property out from underneath you.
- Children's lives (bankruptcy, divorce) do not affect you.
- Maine cannot seek recovery for Maine Care lien when institutionalized parent dies. Asset is completely out your name and no transfer penalties after look back period is passed (currently five years, 60 months).
- It is not an issue if children predecease you, as it will pass to alternate beneficiaries named in the trust.
- If capital gains tax is an issue, children will receive step-up in basis when you die (see discussion below) which could result in substantial income tax savings for them.
- Only option for people who have lots of children, special circumstances (i.e., needing a special needs trust for children) or children who don't really get along. Your named Trustee will be in charge.

Disadvantages

- Trust now owns your property. You are completely out of control. *BUT* trustee cannot sell, throw you out, etc. Trustee is *not* free to sell property at any time without your permission.
- You cannot refinance. No reverse mortgage.
- If you sell, trust may face capital gains tax issues. See discussion below.
- Trust is permanent and irrevocable.

Bottom line: Least flexible but only option for parents with multiple children or children with issues. No capital gains tax issues for kids if they sell after you die.

CAPITAL GAINS

Capital gains tax is a tax the State of Maine and the IRS impose on any gain after the sale of an asset (real estate, stock, etc.). Many people do not encounter capital gains tax if they don't

own stocks or real estate that is not their primary residence. Your primary residence is protected from capital gains tax (\$250,000 gain per person, \$500,000 per married couple).

How Do You Calculate a Gain?

***Example:** John paid \$50,000 for his house in 1970 but it is now worth \$200,000. When he goes to sell his house, his capital gain is \$200,000 (sales price) minus what he originally paid for it (\$50,000 – also called his “basis” in the property). John does not pay any capital gains tax when he sells because his \$150,000 gain is exempted from tax since it is his primary residence.*

Why is capital gains tax important? When we give our property away to our children, for example, they take our basis in the property. It is known as “gift basis.” It is not their primary residence so if the property is sold, the children are subject to capital gains tax.

***Example:** John paid \$50,000 for his house in 1970 but it is now worth \$200,000. He gives his daughter his property by deed while he is alive. When his daughter sells she takes her father’s \$50,000 basis in the property (called “gift” basis). The \$150,000 gain is taxed by both the State of Maine and the IRS. The daughter will be responsible for the tax.*

Also, basis includes any capital improvements to the property. If you put on an addition or added a new kitchen, etc., those amounts can be added to the basis. The broker’s real estate commission, if any, can also be added.

***Example:** John pays \$50,000 for his house in 1970. He puts on an addition and paid \$150,000 to the builder. He can prove this expense. His ADJUSTED basis is \$200,000. He then deeds his house to his daughter while he is alive. Her gift basis is \$200,000. If his daughter sells his house for \$200,000 there is no capital gains tax.*

“Step-Up Basis” - Here’s one more thing you need to know

If we give any asset that we own at our death, the recipient gets that asset with “step-up” basis. The basis in the property “steps-up” (or re-sets) to the value of the property at date of death.

***Example:** John paid \$50,000 for his house in 1970. He made no capital improvements, or John did all the work by hand, so there are no receipts. John dies leaving*

his house now valued at \$200,000 to his daughter. Daughter INHERITS the property from her father with a new “step-up” basis of \$200,000. She goes to sell the house (remember, it’s not her primary residence). There is no gain because her basis is \$200,000. She pays no capital gains tax.

How does this relate back to elder care planning? Many people inadvertently saddle their children with completely avoidable capital gains tax. In the example above, John *THINKS* he is doing the right thing by giving his daughter his house during his life so she won’t have to worry about a Maine Care lien if the State has to pay for his nursing home care. In that example, let us say it turned out that John never needed nursing care. But, because John deeded his property to his daughter while he was alive she will have significant tax on the \$150,000 gain, which could have been *completely* avoided by John not doing anything with the property.

Are you completely confused? This is one of the most complicated areas of the law. No one can predict the future. EVERY case is different and you cannot listen to what your neighbor did, or what your brother did, because they may have a completely different set of circumstances. Only your accountant or similar professional can give you an exact number regarding your basis.

If capital gains tax is an issue in your family, you need to simply plan around it. It can be done through a life lease or an irrevocable trust.

If capital gains tax is not an issue (or, for example, your house is also your child’s primary residence) you have more freedom to do a simple deed.

So, to reiterate: To calculate your basis in your property:

Take the price you paid, add in all your capital improvements, if any, then subtract that number from the current value of your home.

Remember: The market will hopefully continue to rise. Your property *could* be worth far more at a later date. It’s the date of the sale that matters.

Knowing your basis is just a piece of the puzzle in asset protection. When I meet with clients we carefully go through every option to decide which one fits best for their unique circumstances. There is no “one size fits all.”