

Giving Away Assets? – Think twice before you do!

Many people, as they grow older, think about giving away their homes or other assets during their lifetimes to their children or other relatives. When thinking about making such a “lifetime transfer,” seniors are often motivated by the desire to have their family members able to help them – or wanting to help children or grandchildren. Other motivators are the desire to avoid probate, having someone else take responsibility for repairs and maintenance, or encouraging someone to live with them to take care of them. The biggest motivator is often a desire to “keep the state from getting the house” if they have to go to a nursing home and seek Medicaid assistance.

THINGS TO CONSIDER

If you are thinking about making a lifetime transfer of your home or other assets, there are many things to consider first:

Loss of Control: If you transfer property, you lose control over it. It will no longer be yours. If you give away your house, you will have no say in whether it is sold or mortgaged, and you may lose your right to live there. If you give away money, you may not get it back if you need it.

Creditors or Family Difficulties: If you transfer your house or other assets, you may make the property subject to claims by the creditors of the person to whom you transfer it. If your child, for example, gets divorced, or sued, or declares bankruptcy, your house or money could be lost for good.

Capital Gains Tax: If you transfer your home or other investments, and the value of the asset has increased since you bought it, the new owner will likely have to pay capital gains tax on the sales proceeds if s/he sells the asset. If you had transferred the home or other assets to the new owner after your death, that tax would be avoided.

Estate and Gift Tax: If you transfer your house or other assets for less than its value, you will probably need to file a gift tax return. You will use up some of your lifetime gift and estate tax protection. And, depending upon the value of the gifted asset and the value of other gifts you may have made in your lifetime, you may have to pay gift tax.

Impact on Government Benefits Eligibility: Owning a home does *not* make you ineligible for benefits. For most programs, real estate is considered “not countable.” Some transfers to specifically designated persons are even permissible under the MassHealth rules. However, those opportunities are limited and in most cases, transfers for less than true value will render you ineligible for a significant period of time. Transferring your home can also impact on the amount of benefits you (and/or your family member) may be receiving under SSI (Supplemental Security Income).

GET ADVICE FIRST!

You should never give away your home or other assets without first getting independent advice from your own attorney who is knowledgeable in elder law or estate planning.