**REAL ESTATE CONVEYANCE OPTIONS**

Many people have asked about their options in conveying their real estate to their children in order to attempt to avoid probate or protect the property from potential nursing home costs.

There are three basic ways to make the transfer, and all have different advantages and disadvantages.

In the end, only you are in a position to make the choice of how to proceed. Be aware that postponement of the matter may be detrimental to your financial health. The problem won’t get better by ignoring it. Whatever decision you make, and it may not be the “perfect” one, will be better than doing nothing.

**OPTION 1: CONVEY PROPERTY AND RETAIN A LIFE ESTATE**

This option has been very popular over the years. It allows a person to convey his/her/their property to their children or a trust, remain in the house for as long as they live, and upon the death of the conveyor (2nd to die if by husband and wife), the property passes to the named children without going through probate and with a “step-up in basis”.

**The benefits are:**

Generally speaking, and ignoring the availability of other assets, this option would make the grantor(s) eligible for Medical Assistance (MA) 5 years AFTER the date of the conveyance.

The grantor(s) continue(s) to have use of his/her/their property and pays for all expenses of living there. (Taxes, insurance, upkeep) (Same costs as if still 100% owned by Grantor)

Upon the death(s) of the Grantor(s), the child(ren) would receive the property without needing to go through probate, generally saving thousands of dollars, perhaps avoiding probate entirely.

The **“stepped-up basis**” means the children receive the property at its date of death value, not the amount the grantor paid for the property. This usually means that the child(ren) could avoid capital gains taxes upon sale.

If you never receive MA benefits, this is an excellent plan.

**The disadvantages are:**

Although the property can be sold, caution must be exercised. If the conveyance is more than 5 years old, a sale transforms an unavailable asset into an available asset for MA purposes. The net result is that you’d lose MA eligibility until the sale proceeds are spent.

A second disadvantage is that even if you were MA eligible and if you receive MA benefits, the State of Wisconsin will have a lien on the value of the *life estate*. That amount will depend on your age at death and the value of the property. The older you get, the lower the life estate value. The value is determined by a table published by the state.

This may still be a viable option in that under a worst case scenario, the bulk of the value of the property will be preserved.

**OPTION 2: CONVEY THE PROPERTY WITH A RESERVED LIFE LEASE**

With this option, the grantor has completely divested his/her property to his/her child(ren). The grantor enters into a lease option in which he/she rents the property back from their children, with rent being the property taxes, insurance, upkeep, and other costs of living there. Nothing is paid to the child(ren) as rent. (This option is occasionally paired with a type of trust to make specific provisions for different beneficiaries that cannot be done on a simple deed.) The grantor pays the same costs as if still owned.

**Advantages of this option are**:

The parent is able to live in the home as long as he/she wishes. The child(ren) cannot terminate the lease except under certain specific conditions: (a) the parent has not lived in the home for a specific period of time (e.g., 90 days), (2) the parent has a medical condition that does not allow them to ever reside in the home, even with some assistance. The parent may terminate the lease at any time for any reason.

The gift to the children is complete at inception, *and ignoring the availability of other assets,* this option would make a parent eligible for Medical Assistance (MA) 5 years AFTER the date of the conveyance.

Since the parent retains no ownership, there is no probate, and if the parent receives MA, estate recovery is not available to the state.

**Disadvantages of this option are:**

Full ownership has been conveyed and the parent cannot regain ownership or control unless the children deed it back. (Which may be necessary in some cases when a parent needs a nursing home in less than 5 years.)

The property will be subject to the claims of your children’s creditors.

Although not subject to probate, the property passes to your children at a value equal to whatever you paid for the house (or the stepped-up basis received if a spouse died prior to this conveyance). Because of this, your children may be liable for capital gains tax. This is a very real problem when there is high value property involved (e.g. farmland) that was acquired at a low cost.

This is probably a more reasonable option where the property is of a lower value or where there are several children to divide the proceeds.

If the parent never goes into the nursing home, the capital gains tax advantage of other options is lost.

**OPTION 3: TRANSFER ON DEATH DESIGNATION**

This is a simple option in which the parent executes and records a deed stating that upon their death the property passes outside of probate to the children or a trust. Prior to that, the property is completely owned by the parent and can be sold, mortgaged, or later given away. The conveyance does not occur until death.

**The advantages of this option are:**

The parent retains complete control of the property.

Upon death, the property passes outside of probate and with the “step-up in basis” generally eliminating a capital gains tax to the children.

**The disadvantages of this option are:**

Since complete ownership is retained during the parent’s lifetime, the property may have to be sold and the proceeds spent on nursing home care. The “5-year divestment rule” never begins.

This is a viable option where the parent does not have a nursing home issue (e.g. has nursing home insurance or substantial assets) and wants to preserve the option to sell the property at a later date.

**WHAT SHOULD YOU DO?**

Consider your situation and look at the probabilities of your need for nursing home care, tax issues, and avoidance of probate.

**It is important to know about MA rules, including divestments, asset and income limits, and spousal impoverishment. You should speak with an attorney experienced in these matters or to the ADRC to make certain you have a thorough understanding of your options so you can see how they might play out under different situations.**