

The Pros and Cons of Lifetime Gifts Compared to Post Death Transfers of California Real Property by Mark W. Bidwell

Lifetime gifts and post death transfers pros and cons on taxes, Medi-Cal eligibility and control.

HUNTINGTON BEACH, CA, UNITED STATES, February 6, 2020 /EINPresswire.com/ -- In anticipation of death, either imminent or far into the future, an owner of California real property can either gift while living the property, or plan by will or trust, for the transfer to occur after death. This article by [Mark W. Bidwell](#), a licensed attorney in California; looks at the pros and cons of the tax, control and Medi-Cal eligibility.

The first tax to consider is the property tax. In [California property taxes](#) are assessed at about one percent of the purchase price of the real property plus nominal annual increases. This is the property tax base. A gift while living will increase the property tax base to fair market value. Post death transfers delay the property tax base increase to the date of death.

There are exceptions to the property tax base increase, such as spousal transfers and transfers between parent and child. Transfers between spouses is unlimited. Transfers between parent to child are limited to the primary home, plus \$1 million of additional real property. The property tax base is protected in spousal and parent to child transfers.

But other transfers, such as transfers between siblings and transfers between co-owners who are not married will result in an increase in property taxes. To reduce property taxes for these transfers it is best to delay the transfer as long as possible, which is after death.

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The second tax is the capital gains tax. The purchase price is the basis, reduced by depreciation and increased by improvements. For all gifts, regardless of the relationship of the parties the subsequent sale will result in capital gains tax on the difference between the basis and the sales price.

Real property transfers on death receive a step-up in basis to the fair market value as of date of death. On sale, the capital gains tax is limited to sales price less the date of

death fair market value. To minimize capital gains tax, post death transfers is preferable to lifetime gift transfers.



Post death transfer of California real property

A lifetime gift may affect Medi-Cal eligibility. The timing of the transfer may disqualify the owner for a few years because of the look back period for assets transfers. For [Medi-Cal reimbursement](#) the issue is not gift versus death transfer, but how the death transfer is made.

Medi-Cal recovery is limited to “all real and personal property and other assets in the individual’s probate estate.” Transfers in probate court by will are subject to recovery by Medi-Cal, transfers by trust are not. A trust is the most effective transfer of real property for Medi-Cal eligibility and reimbursement.

Regardless of taxes and Medi-Cal, the biggest problem with a lifetime transfer is the loss of control. When a person gifts real property or a portion of the real property, he or she no longer has the ability to sell the house or borrow money on the house without the new owner’s consent. The real property is subject to the new owner’s creditors for debt recovery. A new owner’s spouse may also acquire an ownership interest in the real property

In anticipation of death, either imminent or far into the future, an owner of California real property can either gift while living the property, or plan by will or trust, for the transfer to occur after death. When evaluating the pros and cons of taxes, control, post death transfers are the best. For Medi-Cal eligibility and reimbursement, the post death transfer by trust is preferable to a will.

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