

Lifetime Gifts Compared to Post-death Transfers of California Real Property

This article looks at the tax burden and loss of control for gifts compared to post death transfers.

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In anticipation of death, an owner of California real property can either gift while living or transfer on death real property. This article by [Deed and Record](#) looks at the tax burden and loss of control for [gifts compared to post death transfers](#).



Life time gifts compared to death transfers

The first tax to consider is the property tax. 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.

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Gifts have tax burdens and loss of control that post death transfers avoid”

Mark W. Bidwell

Spouse and parent-to-child transfers are exceptions to the property tax base increase. Transfers between spouses are unlimited in amount. Transfers between parent-to-child are limited to the home where parent and child lived. Transfers between siblings and co-owners who are not married will result in an increase in property taxes. Post death transfers delay the property tax base increase to the

date of death.

The second tax to consider is the capital gains tax. The capital gains tax is on the difference between purchase price and selling price. For all lifetime gifts, the subsequent sale will result in capital gains tax on the difference between the basis and the sales price, less an exemption amount for primary residences.

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. Post death transfers are preferable to lifetime gift transfers to minimize capital gains tax.

Regardless of taxes, 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. Because gifts increase the tax burden and give up control, post death transfers are better than gifts.

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