

A Gift Compared to a Bequest for a Home in California

This article delves into the intricacies of gifts versus bequests. The factors of tax implications, family dynamics, and legal considerations are examined.

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/EINPresswire.com/ -- As the value of California real property increases, many young people despair they will never own a home. At the same time, their parents search for how best to transfer their home to their children. With the nuances of state laws and tax implications at play, parents seek clarity on the most advantageous approach to ensure the smooth transfer of their home to their children.



Inter-generational wealth transfers. Gift during lifetime compared to transfers on death

This press release by [Deed and Record](#) addresses this critical question. This article delves into the intricacies of gifting versus bequeathing property in California. This press release examines the three factors: tax implications, family dynamics, and legal considerations.

Tax Implications: The first tax to consider is the property tax. California assesses property taxes 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.

Spouse and parent-to-child transfers are exceptions to the property tax base increase. Transfers between spouses are unlimited in amount. Transfers between parent and child are limited to the home where the parent and child live.

The second tax to consider is the capital gains tax. The capital gains tax is on the difference between the purchase and selling prices. 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 the 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.

Family Dynamics: 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, they can no longer sell the house or borrow money on the house without the new owner's consent. Also, the real property is subject to the new owner's creditors for debt recovery.

Another problem with gifting is the child's spouse may assert an interest in the real property. The gift becomes leverage by the divorcing in-law to inflict damage on all co-owners.

Family dynamics may also be a problem in death. Most parents want an equal distribution. But if the estate does not have enough assets to give the house to one child, there may be co-owners. Can these children work together? An option to own is selling the property and then distributing the sales proceeds.

Another issue is sibling rivalry. This usually arises on the death of the second spouse, and one child is the caregiver. Did one child live with the parents? Was the child caregiver of the parents? Did that child sacrifice their employment to provide that care? Is unequal distribution a good idea to compensate the caregiver? If so, the parents, if able, need to plan and communicate with all siblings about how their home will be distributed.

Legal considerations. Because of tax implications and family dynamics, gifting is not advised. Instead, death transfer is the best. And for post-death transfers, they happen with or without planning.

No planning is easy for the parents and challenging for the children. The parents do nothing. Without written instructions to the contrary, California law requires a surviving parent's assets to be transferred to the children. The children must file a petition in probate court, which is costly and time-consuming.

Planning has two options: a trust or a revocable transfer-on-death-deed. A transfer-on-death-deed does not change owners. Instead, it identifies who will inherit the property. A significant problem with this deed is the reluctance of title insurance companies to issue policies for about three years from death. This reluctance makes borrowing on the property or selling the property difficult during this period.

Trusts have been around for a long time, and banks and title companies are comfortable with how they work. A trust costs more than a deed but provides more distribution options and allows for contingencies. Also, a trust allows for the distribution of other assets the parent

owns.

This press release aims to empower individuals with the knowledge and insights to make informed decisions about transferring their home to their children. This article concludes that a trust is the best option. But a revocable transfer-on-death-deed is also available for the surviving spouse.

To that end, Deed and Record [provides deeds and trusts for all of California](#). If you have any questions on how to proceed, please call [Mark W. Bidwell](#) at 714-846-2888 or Mark@DeedAndRecord.com.

The office is at 4952 Warner Avenue, Suite 235, Huntington Beach, CA 92649.

Mark Bidwell
Deed and Record
+1 714-846-2888
[email us here](#)

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