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REAL ESTATE

Estate Planning: Leaving a Home to Heirs While You're Still Alive

By KAYA LATERMAN AUG. 25, 2017

As baby boomers age and head into retirement, estate planning has become a thriving business. And how best to deal with our homes — often our most valuable asset — is among the most fraught questions that need addressing.

Sell and downsize to leave a larger pot of cash for heirs to divide? Deed the house or apartment to your adult children now to avoid squabbling after you're gone? If so, where do you live in the meantime?

In New York City, there are thousands of so-called paper millionaires because the value of homes has soared over the years. Consider this: If you purchased a brownstone on the Upper West Side for $18,000 in 1960, you could sell it today for above $5 million, agents say.

Since many older adults want to stay in their homes, or "age in place," according to a report from the AARP Public Policy Institute and the National Conference of State Legislatures, they may opt to make a gift of their home to someone instead of cashing out and downsizing.

The standard way to leave a home to an heir is through a will. But there are also a variety of trusts that can be created to help minimize costs and delays connected to the transfer of your assets once you're gone. Considering and discussing these options can be difficult for everyone involved, but financial advisers encourage people to tackle them sooner rather than later.

A simple will works best when the potential heirs of a home all get along and the person chosen to be the executor of the estate lives in the same state where the home is. But if there are multiple heirs in different financial brackets, disagreements may break out over whether to keep or sell an inherited home. In such cases, experts suggest setting up a trust.

"Even when your kids aren't expecting anything to be left to them, I have seen many family controversies that have erupted over what to do with a house," said Victoria Fillet Konrad, a founder of Blueprint Financial Planning in Hoboken, N.J. "If you're looking for a smooth transition from one generation to the next, without fights and the high cost of probate, it's best to set up a trust," she said.

Out-of-town executors of New York estates often have to fly here to attend hearings, file and sign paperwork and appear in the appropriate Surrogate's Court to settle the will, according to Daniel Timins, an estate and elder law lawyer and a certified financial planner with a practice in Manhattan.

"People take days off from work to head to probate, which costs time and money," he said. "Who likes spending their vacation days in probate?" The alternative is to hire a lawyer to act as executor, but that can get expensive.

When assets are left through a will, about 5 to 15 percent of the total value of the estate goes to pay probate and legal fees, said Kevin Ruth, the head of wealth planning and personal trust at Fidelity Investments.

Creating a trust, however, can lower those costs and be paid by you upfront. And named beneficiaries of a trust do not have to go through probate.

"It's an easier and speedier process to distribute things," Mr. Timins said. Forming a trust also ensures assets cannot fall "into the wrong hands," such as those of an adult child's former spouse.

About 53 percent of people who formed a trust were trying to avoid family squabbles, according to a 2016 survey by WealthCounsel, an education and software firm for estate lawyers.

To set up a trust, you'll need a lawyer, and you'll have to select a trustee with sound organizational and financial skills. That person should be comfortable taking on the responsibility, Mr. Ruth said.

Mr. Ruth, for example, was surprised when he found out that his older brother had been named executor of his parents' will and the trustee of the family trust. "He is the oldest, but my career is in wealth management!" Mr. Ruth said. Although Mr. Ruth's brother was capable of handling his parents' affairs, the brothers wondered why they had not named the younger Mr. Ruth, the expert, to handle things. After a family discussion, Mr. Ruth said his parents "heard our voices," and realized that he should be the executor and trustee.

Trusts can be irrevocable or revocable; each has its pros and cons, far too complicated to describe here. Simply put, in an irrevocable trust, the grantor surrenders the right to call off the arrangement. A revocable trust allows you to appoint yourself trustee, with the task passing to someone else after your death, according to Ronald A. Fatoullah, an elder law and estate planning lawyer with an office in Great Neck, N.Y.

There are potential tax and health care savings if you choose to transfer your property to your children while you're still alive. Gifting a property can help you qualify for Medicaid, which can provide long-term health and nursing care, Mr. Fatoullah said. Generally, to be eligible for Medicaid, you must meet certain income limits for a minimum of five years before your death, transferring property through an irrevocable Medicaid Asset Protection Trust. There is, however, a fair amount of ethical debate over this legal maneuver.

Another type of trust to consider if your home is worth a significant amount of money is a Qualified Personal Residence Trust. Most estates are not subject to estate and gift taxes because the federal government has set the exemption amount fairly high. The estate and gift tax exemption in 2017 is $5.49 million for individuals and about $11 million for couples.

For estates that exceed the tax-exemption limit, estate planners often advise placing a primary or secondary home in a Qualified Personal Residence Trust. This

type of trust essentially allows the homeowner to give the property to beneficiaries at a fraction of its value, which reduces the estate tax burden, Mr. Fatoullah said.

Through this structure, you transfer your home to an irrevocable trust, but retain an interest in the home for a term of years you define. This type of trust works best for people who expect to live another decade or more. The longer the term of the trust, the more beneficial the gift is to the beneficiaries.

The Internal Revenue Service calculates the home's gift value using a formula that includes actuarial tables based on the grantor's age, the term of the trust, and the I.R.S.'s prescribed interest rate on the date of transfer, said Scott Testa, a partner and certified public accountant at Friedman LLP, an accounting and advisory firm in Manhattan. The home is thus passed down to heirs at a deep discount on the actual market value of the house.

"You can live in the house without paying rent and personally deduct real estate taxes and mortgage interest," during the term, Mr. Testa said.

But if you die before the term ends, the home will be subject to estate taxes at fair market value. If you outlive the term of the trust, the property goes to your beneficiary, who can ask you for rent or even evict you, but that is something that can be negotiated when the trust is created.

For New Yorkers who live in co-ops, gifting their apartments is more complicated than handing over a single-family home. An heir who wants the shares transferred to his or her name is subject to the same co-op board approval process as a new purchaser, including a financial review and a board interview. When a co-op member dies, most co-op boards prefer that the beneficiary sell the unit, said Joan Kagan, a sales manager at Triplemint, a real estate firm.

She recalled a client who inherited an apartment on the Upper West Side: "It took us over a year to negotiate with the board so she could stay," Ms. Kagan said.

Margaret Kogan, 73, a retired clinical social worker who lives in Tarrytown, N.Y., suddenly found herself responsible for her mother's finances in 2010. Her mother, Zena Weshta, did not want to leave her six-bedroom home in Fiske Terrace,

Brooklyn, but after a life-changing fall placed Ms. Weshta, then 87, in a hospital and subsequently, an assisted living facility, Ms. Kogan and her three siblings felt the impact of their parent's lack of estate planning.

"The first few years after Mom's fall was horrendous," Ms. Kogan said. "We had no idea what she owned and it was hard to make sense of it all."

Having to deal with her mother's assets while worrying about her health was, at times, "excruciating" Ms. Kogan said. "It was a full-time job."

Ms. Kogan and her brother, who had joint power of attorney, had to figure out how to pay for their mother's long-term care. The family ultimately decided to put the Fiske Terrace home, and a vacation bungalow in Southold, N.Y., into an irrevocable trust. They rented both properties and used the proceeds to pay for medical bills before eventually selling both homes. Ms. Weshta died last year.

To help your beneficiaries avoid unnecessary stress during a sensitive time, Ms. Konrad, the financial planner, said you must ask yourself and your potential heirs what will happen to your home after you die. "It's about distributing the right assets to the right people," she said. "If your heirs are children who have no interest in living in your house, or they don't want to manage a rental property, then what's the point of gifting it to them?"

Vilma Maitland, 69, understands this dilemma. She recently attended a seminar given by Mr. Fatoullah at the public library in Laurelton, Queens, because she had lingering questions after setting up her will. In it, she gave her home in Springfield Gardens, Queens, to her three granddaughters, who are in college and high school.

By the end of the seminar, she had begun to wonder whether leaving them her house was the best choice. "I look at them and none of them seem to want to live there," she said. "Do I need to change how I leave things? I have some thinking to do."

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