

As we age, we are advised to protect our assets, not only for our needs— but for the needs of our family as well. Because the home is one of the most important assets in our estate, careful consideration and special thought is required in the disposition of our home. In order to protect our real estate, it is helpful to understand how to title the property. The following are variations of property ownership:

### Tenancy & Co-Owned Property

When two or more individuals co-own property, the relationship between owners is “tenancy.” Deciding on the type of tenancy can determine how and whether the property will pass freely at an owner’s death. Tenancy comes in three forms:

1. **Tenancy in Common** allows owners greatest flexibility. Each co-tenant has an interest in the property and is free to transfer this interest during life or through a Will. Co-tenants can have different ownership interests and may sever the relationship with other tenants by conveying their interest to another party. This new third party becomes a tenant in Common with the other owners.
2. **Joint Tenancy** must have equal ownership interests in a property. If one of the joint tenants die, their interest immediately ceases to exist and the remaining joint tenants own the property. The disadvantage to both Joint Tenancy and Tenancy in Common is that creditors can attach the tenant’s property to satisfy debt.
3. **Tenancy by the Entirety** is only available to married couples and is based on the societal value of protecting the family. One tenant is unable to convey interest on their own. Upon the death of a spouse, the interest automatically passes to the other spouse. The creditors of one spouse are unable to attach the property or force its sale to recover debt unless both spouses consent.

### Medicaid & Deficit Reduction Act

Medicaid, the government benefit program which often provides long-term care and medical costs, have special rules covering the availability of homestead property to cover care. Under Medicaid’s rules, a home is an exempt asset and its transfer can be exempt from the normal five year look back period of ineligibility if transferred to one of the following:

1. A spouse.
2. A minor (under 21), or a disabled child of the individual.
3. A sibling with an equity interest in the home who resided at the home at least one year before institutionalization.
4. A son or daughter of the individual who resided in the home for at least two years and provided care to keep the person from becoming institutionalized.

The Deficit Reduction Act, which went into effect in February of 2006, created limits on the exemption of the home by making an individual with a home equity above **\$750,000** ineligible for Medicaid benefits.

### Tax Considerations

Any transfer of a large asset, such as a valuable home, has tax implications. When considering a house transfer, **Capital Gains Tax, Income Tax** and **Gift Tax** must all be fully addressed and reviewed with your financial advisor or accountant.

### Protecting Your Property

Before transferring your home to your heirs, or placing the title into a Trust, one should consider:

- Exploring the idea of Retained Life Estate.
- Considering the impact on any real estate taxes, such as the New York State STAR or Veteran’s exemptions.
- Planning early to avoid rushed and forced decisions.



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