

The **Estate Analyst**[®]

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What To Do With Grandma's House?

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If walls could only talk.

“Every stick of wood, every nail, every window pane in my house tells another story,” one Grandmother told her lawyer.

The children who grew up in a family home often move away to raise children of their own, leaving only the matriarch as the last remaining member of the family still living in a house where 50 Thanksgiving dinners took place.

But now there are financial decisions to be made.

Should the house be sold or transferred during Grandma's lifetime? What capital gains or estate tax consequences may affect the decision?

What if multiple family members want to keep the house in the family for use as a summer home? What if one family member wants to purchase the house?

Let's consider some of the financial and practical questions that can arise about Grandma's house.¹

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Questions & Answers About GRANDMA'S HOUSE

Q: Grandma Betty has owned a house for 30 years. Will there be capital gains if she sells her house?

A: Let's assume that Grandma Betty is a widow and owns the entire house by herself. Grandma Betty can transfer the house without paying any tax on up to \$250,000 of capital gains. So if the house were purchased for \$50,000 and is being sold now for \$300,000, no capital gains would be incurred.

Q: Grandma Darla's house was purchased for \$50,000 in 1960 before her neighborhood went "upscale." Today, her house is worth \$1.3 million. There are capital gains of \$1 million and a potential tax of \$150,000 if sold now. Should Grandma Darla hold on to her house and have it transferred after her death?

A: Maybe. The key inquiry is whether Grandma Darla's estate is taxable. In 2006, the estate tax exemption will rise to \$2 million, where it will remain in 2007 and 2008. In 2009, the exemption will rise to \$3.5 million.

But with stock values falling as the new millennium began and with real estate values rising, the family home may have resumed its traditional role as being the largest asset of many estates.

If Grandma Darla's entire estate is less than \$2 million, she could hold on to the house and transfer it with a stepped-up basis. However, estate tax and capital gains rules change after 2010 (and perhaps sooner), so any decision will need to be reviewed again.

This is where the short answer to a client ends and a longer analysis begins to swirl within the estate planner's head. What's the whole context here?

- How big is the total estate?
- What are the other assets?
- What are the client's objectives?
- What is the client's life expectancy?

What are the outcomes in the various scenarios of a) repeal in 2010 b) resurrection of estate tax in 2011

or c) whatever compromise Congress comes up with in the meantime.

Q: Grandma Ernestine is in failing health. Her house is in a newly revitalized area and has from \$350,000 to \$750,000 the last 18 months. Should she try to sell the house right away in anticipation of real estate's bubble bursting?

A: The danger is that the real estate bubble bursts, the home drops in value by \$400,000, Grandma E dies while the market is down, and real estate prices don't recover for so long that this house is sold for low value. As a hedge, a sale that locks in the price but takes effect in the future would be ideal.

The situation is not unlike that facing an investor who believes market prices will fall and sells a call option. The timing and value of such a sale have to be based on multiple factors. As a starting point, the potential capital gains on the sale have to be weighed against the potential drop in the market.²

Context is again critical. How large is the rest of the estate? If Grandma E dies while the estate tax exemption is still \$2 million, will her estate be taxable? Does the sale of the house facilitate other estate or financial plans?

Q: Grandma Fran is house rich but cash poor. Can she use the house to provide money for her to live on?

A: Yes. While it is possible for Grandma Fran to take out a home equity loan, there are several other options as well. One option is a "reverse mortgage," in which funds are paid to Grandma Fran. Repayment is not required until the house is sold.

Q: Grandma Helga is selling her house and moving in with her daughter. She will use \$125,000 to pay off her daughter's mortgage. Since her daughter's house is worth \$375,000, she plans to change the deed to the house so that Grandma Helga will own one-third of the house. Is this a good idea?

A: NO! Changing the deed to your house can have estate-planning ramifications and interfere with the future sale of the house. Will Grandma Helga be paying rent or sharing expenses? Will she be forgiving

portions of the debt based on such expenses? It would be prudent to set up a private contract that spells out all the details of the arrangement and secures any debt with a mortgage and/or note to repay Grandma Helga.

Two other areas of inquiry arise here. Are there other beneficiaries of Grandma Helga's estate who will not be familiar with unwritten arrangements. Will they be treated fairly if Grandma gets her name on a deed...but her share ends up going to her daughter by joint ownership with right of survivorship?

A private interview with Grandma should specifically confirm the overall disposition of her assets with respect to other beneficiaries. This is also a time to discern any elder abuse or undue influence.³

Q: Grandma Jean is selling her house to one of her daughters, but she wants to remain in the house for life. How will this affect other plans?

A: Fairness to Grandma Jean's other children depends on how well this arrangement is set up at the beginning. Have an appraisal establish a fair price for the house. An agreement allowing Grandma Jean to live in the house for the remainder of her life should establish whether she is to pay rent, share expenses, or forgive portions of what her daughter, who is purchasing the house, may owe her.

Grandma Jean's will should be reviewed and should clarify how remaining debts will be handled after Grandma Jean's death.

Q: Grandma Quintessa wants to be done with home maintenance cares. She plans on going out in style in a high-end continuing-care community that will shift her from a condominium to an assisted-care facility or a nursing facility when needed. Should her family be concerned about this move?

A: Yes, there are numerous concerns. Continuing care is an attractive concept that can work very well for many people, but all facilities are not alike. There are several critical inquiries:⁴

- What are the entrance fees and how much will monthly fees rise each year?
- Is the facility solvent?
- Who will have final authority in moving the resident to the nursing-home level?
- Will space be available in the different care facilities when needed?

Q: Grandma Zelda wants to sell her home, put the assets in a protected trust for herself and go

on Medicaid. Can she get this done by the end of the year?

A: Not so fast! There is a three-year look-back rule for most transfers that will postpone Medicaid eligibility. There is also a 60-month look back rule for transfers to certain trusts.

In the event that it makes sense to liquidate assets and qualify for Medicaid, there should be planning for several years in advance. The fact that the family home is an exempt asset for Medicaid qualification purposes should be considered as well.

A decision must be made whether to retain the house while receiving Medicaid (knowing that the proceeds of the house will be used to reimburse Medicaid benefits instead of going to heirs). The alternative is selling the house, dividing the proceeds and not qualifying for Medicaid for three years.

Who gets the house?

Q: Grandma owns a house. Since her unmarried son Fredo lives with her, she placed his name on the deed to the house. But Grandma's Will leaves her "house and property to my three sons, share and share alike." Who gets the house?

A: The deed controls ownership of the house. The Will cannot change that. Fredo gets the entire house. He also gets one-third of the other assets of the estate.

A legal action by the two sons who are disappointed at not sharing in the house faces an uphill battle involving proving the testator's mistaken understandings of law.

TECHNICAL REFERENCES

1. Why Grandma's house and not Grandpa's? Is that stereotyping? Not entirely. Statistically, American men have a life expectancy of 74.5 years while for women the life expectancy is 79.9 years (as of 2002 data, reported by the Center for Disease Control in 2004). Combine that statistic with the pattern of May/December relationships with husbands being older than wives, factor in divorced women staying in the family home while husbands move out, and homes end up in Grandma's estate more often than not.

2. Korn, *Through the roof*, Financial Planning, p.70 (Feb., 2003).

3. Zimring, *Housing options for the elderly: opportunities and challenges*, 31 Estate Planning 7, p. 321 (July, 2004).

4. Gilfix, *Elder housing*, 142 Trusts & Estates 4, p. 50 (April, 2003).

Elder Law Redefined

“What is 'elder law'?”

Numerous articles have been written with that exact title. The very fact that the question arises so often (and has differing answers) has to tell you something. And the sudden appearance of a newly discovered specialty in the mid-1980s should raise suspicion as well; how was it that legal scholars overlooked this niche for so many centuries?

Elder law was never an authentic specialty of law. It was a man-made amalgam of other legal niches that was created in conjunction with a demographic phenomenon, i.e., the arrival of significant numbers of elderly people.

The organizing principle of elder law is the age of the client. But what “law” is included in this niche other than such obvious items as estate planning, drafting advance medical directives, or qualifying for Medicaid benefits? *FreeAdvice.com* provides one definition:

“Elder Law is a relatively new specialized field of law that deals with the issues faced by the fastest growing segment of the US population, the elderly. It combines elements of Estate Planning, Wills and Trusts, Conservatorship, Health Care Planning and Medicare/Medicaid Planning.”

The National Association of Elder Law Attorneys (NAELA) describes a similar bundle of practice areas that fall within the category:

“Under this holistic approach, the elder law practitioner handles general estate planning issues and counsels clients about planning for incapacity with alternative decision making documents. The attorney would also assist the client in planning for possible long-term care needs, including nursing home care. Locating the appropriate type of care, coordinating private and public resources to finance the cost of care, and working to ensure the client's right to quality care are all part of the elder law practice.”

Yet the answer depends on whom you ask. Does “elder law” also include slip-and-fall personal injuries of elderly clientele, medical malpractice, age discrimination in employment contexts, equal access for the handicapped, or retirement benefits law? Taken to its illogical conclusion, the pure “elder lawyer” would be a general practitioner with a practice limited to elderly people.

A New Majority

For an estate planner, the elder law niche never made sense because every single client is planning for elder years. We've always had elderly people. And older clients have always been a mainstay of an estate planning practice for obvious reasons. What's changed is that we have more of them.

And there are big changes happening to the artificially created elder law niche that cannot be ignored for much longer.

About 12.4% of the population of the United States is currently age 65 or older. But there is a big baby boom bulge in the population that is rapidly entering the elder age bracket. And all those elders are going to be with us for a while, thanks to longer life expectancies. Someone aged 65 can now expect to live to age 81.

Consider the following from *AdAge.com*:

“LOS ANGELES, July, 2005—Boomers will reach a milestone at the end of the next TV season: More than half of baby boomers will be age 50 or older. They will leave the 18-to-49 demographic so coveted by advertisers.”

If you are a professional who focuses on elder law and elder clientele, the biggest bulge of population has entered your niche. When a niche market becomes the majority, it is no longer a niche. It is the main focus. Specializing in the needs of the “elders” is becoming about as specific as specializing in the need of homo sapiens.

“When a niche market becomes the majority, it is no longer a niche.”

“What Is Elder Law,” published by West Law (and available free online), observes just how broad the elder niche has become demographically. It is projected that by 2010, 39% of the population will be over age 65. This will rise to 69% by 2030.

With millions of elders, elder law is not going to be the specialty of just a select few practitioners. A turf war will break out over this main source of clients. And when that day arrives and everyone claims to practice elder law, professionals will distinguish themselves by carving out genuine practice specialties. Maybe then estate planners can go back to calling themselves estate planners.