Estate Planning & Real Estate: Essential Guide

A comprehensive overview of how estate planning intersects with real estate ownership, helping homeowners make informed decisions about property transfer, taxation, and family inheritance.

Courtesy Of Scott DeMoss

Why Use a Living Trust for Your Home?

Avoid Probate

Skip the lengthy, public court process when transferring property after death

Maintain Privacy

Keep your property transfers and estate details confidential

Streamlined Management

Enable smooth property management if you become incapacitated

With a revocable living trust, you maintain complete control during your lifetime while preparing for efficient transfer later.

Property Titles & Tax Implications

Property Taxes

In California, transferring your home to your own revocable trust generally doesn't change property taxes, but paperwork must be correct.

Community Property with Right of Survivorship

Gives surviving spouses automatic ownership and may provide a full step-up in basis for tax purposes.

Step-Up in Basis

Heirs often receive a step-up in basis for appreciated property at death under current federal rules, reducing capital gains if they sell.

> Title choice significantly affects both taxes and inheritance. Consult with a CPA as tax rules can change.

Transfer Methods Beyond Traditional Wills

Transfer-on-Death Deed

Names a beneficiary who receives property at death without probate. State rules vary with strict formalities in California.

Revocable Living Trust

You can continue living in your home while it's in a trust where you're the trustee/beneficiary.

"Pour-Over" Will

Catches assets not titled in the trust and directs them into it. Still needed even with a trust.

Leaving Property to Multiple Children

When leaving a home to multiple children, clear instructions are essential to prevent conflict and ensure fairness.

Set Clear Instructions

Specify whether the property should be kept, sold, or if buyout terms apply

Consider a Trust

Establish a timeline and mechanism for handling disputes and upkeep costs

Maintenance Plan

Define how ongoing property expenses will be shared if the home is kept

Protecting Against Incapacity

Without proper planning, incapacity can lead to court conservatorship, resulting in delays and loss of control over your property decisions.

Living Trust

Successor trustee manages trust assets if you become incapacitated

Durable Power of Attorney

Designates someone to make financial decisions on your behalf

Advance Directive

Provides healthcare instructions and appoints a healthcare agent

Investment Properties & Liability Protection

Should rental property be held in an LLC?

Benefits:

- Separates personal assets from rental property liability
- May provide tax advantages depending on your situation
- Creates clearer business structure for multiple properties

Considerations:

- Financing restrictions and due-on-sale clauses
- Additional costs for formation and maintenance
- Requires proper legal and lending advice

Gifting Property & Tax Implications

Don't gift property blindly! A lifetime gift can lose step-up basis benefits for the recipient and may trigger reassessment or other tax issues.

Lifetime Gifting

May trigger immediate tax consequences and lose step-up basis benefits

Inheritance at Death

Often provides favorable tax treatment with step-up in basis

Professional Guidance

Consult with estate attorney and CPA before making property gifts

Property Tax Reassessment

Gifting may trigger reassessment in some states like California

Coordination Is Critical

Avoiding Conflicts Between Estate Documents

Conflicts between deeds, wills, trusts, and beneficiary forms create chaos

Keep all estate documents consistent and aligned with your intentions

Update after major life events: marriage, divorce, death, big purchases/sales

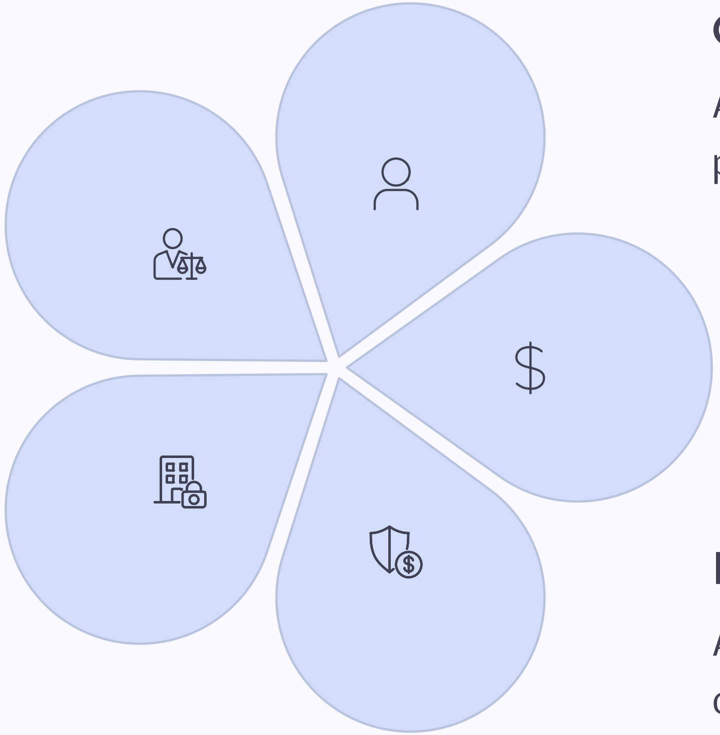
For co-owned property with non-family members, use a co-ownership agreement defining exits, death provisions, insurance, and expense sharing.

Building Your Estate Planning Team

Review your plan every 2-3 years

Estate Attorney

Creates legal documents and ensures compliance with state laws



CPA

Advises on tax implications of estate planning decisions

Financial Planner

Helps align estate plan with overall financial goals

Real Estate Agent

Keeps informed if property title changes are planned

Insurance Professional

Advises on long-term care and liability coverage