

OLDER AMERICANS HOUSING GUIDE

Leaving your home to children or heirs



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Many homeowners want to hand their home down to their children or other heirs when they die. Planning ahead makes the process simpler and less costly, and could decrease potential family conflicts. This guide helps you evaluate different ways to pass your home to your children or heirs, each of which has different financial benefits and risks.

 **Seek advice from legal and tax professionals** because transferring property can have significant financial implications for you, your children, and heirs. You may get free legal help if you are over age 60 or if you qualify on the basis of your income. See *Where to go for help* at the end of this guide for more information.

This guide provides general consumer information. It is not legal advice or regulatory guidance. For information on how to obtain legal help, please see the "Where to go for help" section of this guide. This guide also includes links or references to third-party resources or content. The Bureau does not endorse the third-party or guarantee the accuracy of this third-party information. There may be other resources that also serve your needs.

Choosing among five different ways of transferring your home

Leave your home in your will

The most common way to pass your home to your heirs is through a will—a legal document that sets forth your wishes for what should happen to your property and belongings when you die. It is typically a good idea to have a will, because if you do not, your money and property are distributed based on the laws of your state and not what you necessarily want. Because a will is a legal document, you should consider consulting an attorney to set one up. See the *Where to go for help* section in this guide for more information about how to find an attorney.

 If you plan on leaving your home to your children or other heirs in your will, keep in mind that your state might require your heirs to go through probate before getting the home. Probate is a formal legal process that recognizes your will and appoints an executor or personal representative to distribute your property. Having a will makes the probate process simpler and faster.

Give your home as a gift

You may give your home as a gift to your children or someone else you love before you die, rather than leaving it to them in your will. If you are considering giving your home as a gift, keep in mind that:

- Once the gift is made you may need to move, unless the person you gift it to agrees that you can stay.

- Once gifted, your home is no longer a financial safety net for your future needs. This means you can no longer sell it and use the proceeds, nor take out a loan that is secured by your property.

Sell your home to your children or someone else

Instead of giving your home to someone, you could sell it to them before you die. The primary difference between gifting and selling your home is that the sale of your home would give you funds to pay for future expenses. If you are considering selling your home to your children or other heirs, keep in mind that:

- As with a gift, once you sell your home you may need to move unless the person that you sell to agrees that you can stay.
- The decision to sell your home to your children or heirs—and the price at which you choose to sell it to them—can have significant tax implications for both you and your heirs.

 Another option is adding your children or heirs to the title of your home while you are still alive. This decision carries risks, and it is a good idea to talk to a lawyer about the liability and tax implications for you and your heirs.

Place your home in a trust

You can place your home in a living trust, which is a legal arrangement that allows your home to pass to your children or heirs at a particular time in the future. The main advantage of a living trust over a will is that a living trust means that your home does not pass through probate—a legal process that can be expensive and time-consuming. If you are considering placing your home in a living trust, keep in mind that:

- Trusts are complex legal arrangements, and therefore you will need to hire an attorney to set them up. They are typically more complicated and expensive to create than a standard will.
- Trusts can allow you to delay when your heirs inherit the home after you die, which can be a good option for people with younger children. For example, you could set the terms of your trust so that your heir takes control of the home after they turn 25.
- There are two types of trusts: revocable and irrevocable. Living trusts are “revocable,” meaning that you can make changes to them while you are still alive. “Irrevocable” trusts, cannot be changed after they are established—even if you change your mind about what you wish to do with your home.

! Trusts are sometimes marketed by unscrupulous individuals and firms. Be sure to check references and fully evaluate anyone you might consider doing business with and speak with a financial professional or attorney before making any decisions.

Create a “transfer on death” deed for your property

A “transfer on death” deed is a legal document stating that upon your death, your home should pass to a specific heir. Like a trust, creating and filing a “transfer on death” deed avoids the costs and delays associated with the probate process. However, creating and filing this deed is usually simpler and less expensive than creating a trust. If you are considering creating a “transfer on death” deed for your property, keep in mind that they are not allowed in many states.

Making the best decision for you and your heirs

- Given the possible legal and tax implications, it’s a good idea to talk to a professional with expertise in both.
- The timing of when you sell or gift your home may affect your Medicaid eligibility. To learn more, reach out to your local Area Agency on Aging, which you can locate by contacting the national Eldercare Locator at (800) 677-1116 or eldercare.acl.gov.
- Ask your children or heirs whether they would keep or sell the home if you left it to them, because their answers might affect your planning decisions. For example, if they are planning to sell the home, your choice of how to leave it to them could potentially save them thousands of dollars in taxes.



More CFPB resources consumerfinance.gov/olderamericans

Where to go for help

Legal help

- **Free legal services for people over age 60**

Find local programs that provide free legal help to people over age 60 by contacting the national Eldercare Locator at (800) 677-1116 or eldercare.acl.gov.

- **Free legal services for people with low income**

Find local programs that provide free legal help to low-income people through the Legal Services Corporation at (202) 295-1500 or lsc.gov/find-legal-aid.

- **Fee-for-service lawyers**

The American Bar Association provides information about how to find a lawyer in each state, available legal resources, how to check whether a lawyer is licensed, and what to do if you have problems with a lawyer, at (800) 285-2221 or findlegalhelp.org.

Housing counseling

The U.S. Department of Housing and Urban Development (HUD) provides a list of approved housing counseling agencies that offer advice on buying or renting a home, curing a mortgage default, obtaining a forbearance and avoiding foreclosure. The HUD-approved

housing counseling agencies offer independent advice, often at little or no cost to you, at (800) 569-4287 or consumerfinance.gov/find-a-housing-counselor.

Credit counseling

Most credit counselors offer services through brick-and-mortar offices, online, or via telephone. The U.S. Department of Justice publishes a list of approved credit counselors. Call (202) 514-4100 or see the list at justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111.

Accounting help

The American Institute of CPAs provides a list of local certified public accountants, at (888) 777-7077 or aicpa.org/forthepublic/findacpa.html.

Benefits for older adults

The National Council on Aging publishes a free Benefits CheckUp tool that connects older adults with benefits that they may qualify for. Call the helpline at (800) 794-6559 or visit benefitscheckup.org.



Online

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By phone

(855) 411-CFPB (2372)

(855) 729-CFPB (2372) TTY/TDD



By mail

Consumer Financial Protection Bureau

P.O. Box 27170

Washington, DC 20038



Submit a complaint

consumerfinance.gov/complaint