

Real Property Transfers

What is real property?

Real property is land, property built on the land or permanent improvements to the land or property. The most common type of real property that people own is a home. Personal property may become a part of the real property if it is attached in a permanent way. For example, a furnace usually becomes a part of your home. These attachments are known as “fixtures” in legal terms.

What kinds of real property transfers are there?

There are three ways to transfer property:

- General Warranty Deed - all warranties required by law are granted. There are six specific warranties, which all guarantee something about the owner’s ability to transfer the property without any undisclosed surprises happening after the transfer.
- Special Warranty Deed – only warrants that the seller was the owner of the land and that they have the ability to transfer the property. Anything that happened before they bought or after they sold the property is not their responsibility.
- Quit Claim Deed - there is no warranty. You have little or no way to sue previous owners if it turns out they had a lien against the property, did not own the property, or there was some other problem. People often transfer property with a Quit Claim Deed for a very small amount of money.

Before transferring property through any sort of deed, talk to an attorney about the effect this may have on your taxes or on your eligibility for Medicaid/TennCare or other benefits.

What happens if there is more than one person on the deed?

If you buy or own a property with another person or add someone to your deed, you must carefully describe the kind of interest all owners have. In Tennessee there are three types of joint ownership:

- Joint Tenancy with the Right of Survivorship - This creates equal shares in the property, and the share belonging to one of the owners upon his or her death automatically goes to the other owner. However, the deed must have the words “right of survivorship” for this to apply.
 - Tenancy in Common - This creates equal shares of property for two or more owners. This is what Tennessee courts assume you wanted unless the deed says that the owners have a right of survivorship.
 - Tenancy by the Entirety - This is only for spouses and comes with positives and negatives that you need to ask an attorney about to fully understand.
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Can I transfer my home but still live in it?

Yes. You can leave yourself a life interest in the home. This is called a “life estate,” and it gives you the right to live in the home for the rest of your life. Without a life estate, you will need the new owner’s permission to stay in the home.

Will transferring property affect my ability to receive government benefits?

Transferring property is most likely to affect senior citizens who need TennCare/Medicaid to help pay for nursing home care. If you apply for TennCare (Tennessee’s Medicaid program), they will “look back” 5 years from the date of your application. If you transferred any property for less than the full value, then you may be subject to a “penalty period,” which means you must wait before you can get TennCare. If the property was transferred more than 5 years before the date of application, there should not be any penalty. You should talk to an attorney if you want to transfer your home, and you think you may at some point need nursing home care.

Will TennCare try to get payment from me if I get TennCare benefits?

Yes. To pay the State back for paying for your nursing home care, TennCare has a process called “Estate Recovery.” This means TennCare will file a claim against your estate after your death up to the value of the care provided. This may involve a Court ordering your property sold.

Are there any exceptions to estate recovery?

Yes, there are some exceptions. If you are survived by a spouse, child under the age of 21, or a child of any age who is blind or disabled who is living in the property, TennCare will wait before attempting to sell your property. You should talk to an attorney to see if any of these exceptions apply to you.

If my property does not cover the cost of my care, will my family be liable for the cost of my care?

Generally, no. TennCare can only recover from your estate. Family members will not be personally liable.

What other legal issues should I consider before I transfer my property?

Consider the following before transferring property:

- Any property you deed to someone else is completely under their control unless you leave yourself some interest in the property, such as a life estate. If you deed your home away without this, you lose your right to live there.
- You should talk to an accountant about tax issues that might arise with property transfers.

- You should always talk to a lawyer if you plan to transfer property, even to family. This will ensure that you are fully informed, and if there is some kind of fraud, a lawyer is likely to catch it before you become a victim. This is particularly important if you have been diagnosed with dementia or some other illness that causes mental decline.
- Talk to a lawyer about any potential covenants on the property, zoning issues, and municipal code issues. There may be requirements of which the previous owner was not aware.
- If you have a mortgage or other lien on the property, talk to a lawyer about the risks you could face if you transfer the property.

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