

Current Gift

When you put a child's name on your house, you are making a current gift of your interest in that house to your child. First, this may have negative tax implications. You should seek the advice of an accountant or tax lawyer about the tax effect. Further, although your intent may be that ownership pass to your child only upon your death, ownership will actually pass to the child when you sign and record the deed. This transfer of ownership has a number of implications.

Loss of Control

If you own your home jointly with your child, you will no longer have exclusive control of what is probably your most valuable asset. If you ever want to sell or mortgage the home, you will need to get consent of your child. If the child refuses or is unavailable, you will not be able to sell the house or get a loan.

If you name a child to receive property through a will or living trust, you can

change the provision any time during your life. But unlike a will or living trust, putting your child's name on your house is irrevocable. You cannot remove your child's name from the deed unless she agrees.

Subject to Joint Tenant's Lifestyle

Owning your home jointly with your child also makes you subject to your child's debts and lifestyle. For example, if your child does not manage money well and has excessive charge card debt, the creditors may come and want to use the child's share of your house to settle the debts, or they may place a lien against the house.

Even if your child manages money very well, if the child were ever sued, your house could be used to pay damages. For example, if your child ran a red light and caused extensive damages, the injured party might sue and attempt to use your house to help pay for the damages your child caused.

And if your child is married and later divorces, the child's spouse might claim a community property interest in your home, and tie your home up in the divorce case.

Negative Tax Consequences

Transferring an interest in your house to your child can also have negative tax consequences—both at the time of the transfer and at the time of your death. You should seek the advice of a tax lawyer or accountant about the tax consequences of putting a child's name on the deed to your house.

May Impact Medicaid

Additionally, if you ever anticipate needing Medicaid coverage to pay for long term care, putting your child's name on a house may affect your qualification for Medicaid. However, alternatively, putting the house in joint tenancy could help preserve the home for your heirs. The issue is complex. You should attend Senior Citizens Law Office's Institutional Medicaid Clinic (call 265-2300) or obtain legal advice before transferring your home.

A transfer on death deed provides a better way

A new state law allows real property owners to record a “transfer on death deed” naming a beneficiary to own that real property after you die. The transfer on death deed avoids the risks of joint ownership while retaining the benefits. With a properly recorded transfer on death deed, ownership of the real property does not change until the owner dies. The owner is not liable for the beneficiary’s debts and the owner is able to sell or mortgage the property or revoke the beneficiary designation without the consent of the beneficiary. However, on death, ownership of the property transfers to the named beneficiary without probate. More information is available in SCLO’s brochure “Transfer on Death Deeds.”

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The material provided in this brochure is general information. This information is not intended as a substitute for specific legal advice.



SHOULD YOU PUT YOUR CHILD’S NAME ON YOUR PRIMARY RESIDENCE?



NO.

Many New Mexico residents are familiar with owning real property as joint tenants. Joint tenancy has a “right of survivorship”—when one joint tenant dies, the remaining joint tenant owns the whole piece of property without having to go through probate. Most husbands and wives own their home as joint tenants. However, for the reasons given in this brochure, joint tenancy is usually appropriate only for spouses, not for parents and children.