SFGate.com

Keeping house in the family takes careful planning

Carol Lloyd
Sunday, May 20, 2007

What happens when a home hangs between the life and death of its owner?

"I've seen everything," says Barbara Simon, an independent conservator who acts as a court-appointed adult guardian and who has worked in San Francisco for 19 years. "I've seen kids who want to manage their parents' money, and it has not been pretty. They've pushed (their mother) out of her house, sold all her stuff and put her in a nursing home. Mom's stuff is gone, and basically she was kicked out of her own house. They might as well have burned it down."

Like death itself, end-of-life real estate is a universe of transactions that few of us want to contemplate. Since I began writing this column seven years ago, I've heard all kinds of sad stories of bitter feuds and convoluted laws, but the worst ones always involve that moment when the ephemeral nature of real estate becomes painfully clear: No matter how long we have owned our homes, no matter how much we depended on the house as a security against bad times, no matter how lovingly we remodeled that guest bedroom, one day we die and our homes don't go with us. And what's more, there are often a number of interests vying for control of the place called home.

How our society deals with the transfer of real estate upon death or with an elderly homeowner is a matter of sprawling debate, emotional conundrums and myriad laws. Should a home stay within the family, to preserve the family history, as a container of memories and traditions? Should parents pass their homes to their children before they die, or after? Should they sell the home to pay for an expensive nursing home or assisted living? Or should they opt for a reverse mortgage?

The answers to these questions vary widely, depending on whom you ask.

"I tell my clients that estate planning is like ice cream," says Marc Weissman, an estate and probate attorney based in Fremont. "There's no right answers, but you shouldn't decide until you know all 31 flavors."

Even so, Weissman doesn't shy away from warning his clients to avoid certain pitfalls concerning real estate and estate planning. When clients ask him about transferring title to their children, he quotes his grandfather -- also an estate attorney: "Just imagine your child is perfect -- they would never kick you out of your house. But there are four reasons that you should never transfer title to your children: They can get divorced, they can go bankrupt, they can get sued and they can die. Then where does that leave you?"

When clients still wish to pursue this strategy, he asks them to sign a document acknowledging that they have been counseled in no uncertain terms against transferring title. He recalls one client who ignored his warnings and transferred title to her son, only to have her son -- a treasurer at a hightech company -- get hit with a $15 million lawsuit. "Luckily, the suit was settled, but the woman could easily have lost her home."

Many clients choose to transfer their homes to their children in order to get access to state-funded nursing homes. Nursing homes can cost more than $200 per day, so the prospect of becoming eligible for Medicare-funded nursing homes appeals to many. Medicare covers only those individuals with $2,000 or less in assets, and it exempts primary residences valued at less than $500,000.

But Weissman says that California -- where so many primary residences cost more than $500,000 -- does not go after elders to make them sell their homes to pay for nursing-home bills. Weissman says that the house exemption has led some elders to "buy gold-plated fixtures" in an attempt to shelter their wealth while still getting access to state-funded care, but in general he cautions clients to think twice before changing their lives to become eligible for a nursing home. "Visit them first," he says.

Be warned, while you won't be forced to sell your house to get into a nursing home, Medicare, after the owner's death, can put a lien on a home to be repaid for nursing-home expenses.

Some elders don't get to decide what happens to their homes. Conservators, be they professionals like Simon or family members appointed by the courts, are charged with the responsibility of making decisions for those seniors deemed unable to manage their own affairs.

The rise of professional conservators, whose fees range widely (in San Francisco, they are allowed to charge $125 per hour), spawned numerous abuse scandals involving conservators fleecing their clients (covered extensively by the Los Angeles Times in 2005). In one case, a conservator sold a client's home to herself at far below market value, only to flip it for a profit a few months later. Such abuse reports eventually produced four state laws aimed at curbing conservators' unchecked power.

As of January, conservators (professional or familial) need to get court approval before they sell a client's home or close a client's apartment, and give their clients 30 days' written notice of this. Simon says she also often uses reverse mortgages to free up clients' funds, a useful tactic for those low-income clients who hope to return to their homes after recovering in nursing care.

"I used to avoid reverse mortgages because they typically took between $10,000 and $20,000 (in) fees," says Simon. "But there are new products out there that are really fantastic." She recently took out a $350,000 reverse mortgage for a client who was already in a nursing home, paid off the nursing-home debt of $40,000 and invested the rest in Treasury bonds and CDs to produce more income for the client. "The mortgage fee was only $2,500."

Sometimes Simon finds herself at odds with children who wish to keep the family home, even though the elder needs the cash. In one recent case, she recalls that "the kids wanted to buy the house but for $300,000 less than market value. The court probably won't approve that." In such cases, Simon tries to be creative. "If they're willing to buy the property at market value but take an installment note and payoff a little every year, eventually they stand to inherit that property -- so they'll be wagering with their future inheritance."

If elders decide to forgo difficult questions of real estate, estate planning and passing on the American dream, or if their will is anything less than crystal clear, then in all likelihood the case ends up in probate court. The sheer complexity of the laws governing estates, probate courts and conservatorship and the litigiousness of probate court often leave survivors shell-shocked.

San Francisco resident Fufkin Vollmayer spent years battling over assets in her father's will, including her father's Reno home. Because the will was deemed less than perfectly clear in its intention, it went into probate. In addition to naming his daughter and son in his will, Vollmayer's father also named several charities, each of whom provided lawyers to fight for its chunk. But the court costs ate up large portions of the estate. "At one point there were seven lawyers involved in the case," she says. "It was nasty, brutish and very long."

Probate lawyer Weissman echoes this sentiment. "Probate is really a nasty system designed to make money for lawyers," he says, adding that probate often takes up to two years and involves huge fees, especially with larger estates. "Fees are based on the size of the estate -- the idea being that juicier probates pay for the smaller ones."

When it comes down to selling a house through probate, Weissman tends to advise against it -- recommending, instead, that executors sell the home privately through a real estate agent without a complicated court process, which scares away many average buyers. "Who benefits (from court-approved sales)? Only probate lawyers."

In his novel "Bleak House," Charles Dickens spun a brilliant satire from a historical court case about an elusive estate involving numerous wills that dragged on for decades. As successive generations were named as potential successors to the legendary estate, the lawyers swooped in for the kill. In the end, court costs had completely drained the assets from what was once a vast fortune.

How to avoid the black hole of "Bleak House"? Weissman recommends careful planning and simple equitable living trusts. "When a client says he's distributing his assets between his children equally, I don't worry," he says.

"When a client says he wants to give everything to one child and nothing to another, then I worry. When a client says that he's giving house NO.1 to one child and house NO.2 to another and they aren't identical houses, then I worry."

For many people, their home amounts to the sum total of their security against tragedies, old age and misfortune. The home is supposed to take care of us financially -- through the miracle of appreciation -- as well as shelter us physically and feed us emotionally. But the high value of real estate -- especially in the pricey Bay Area -- creates its own maelstrom of complexity.

Even though many families maintain the hope that the old house will stay in the family, sometimes the home is only as valuable as the freedom it offers. "There are pros and cons either way. Personally, I like selling the real estate," says Weissman. "I tell my clients: Spend the money--enjoy it. It's like that bumper sticker: Fly first class or your kids will."

E-mail CaroILloydatsurreal@sfgate.com.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/05/20/BUGGKPTAU71.DTL

This article appeared on page E - 2 of the San Francisco Chronicle