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To convey or not to convey, that is the question

Harry Kessaram

One of the nicer things that the Government did for aging homeowners with kids was to introduce the stamp duty exemption on the Primary Family Homestead.

Prior to this change in the law, some aging parents were coming under a lot of pressure from their children to hand over the family home while they were Alive.

This happened because the tax payable on a house transfer while the owner was living was a lot lower than inheritance tax.

I use the word "tax" loosely, because technically it's all about stamp duty, which is the way the Government collects money anytime property changes hands.

Transfer tax on property

Stamp duty is paid to the Government on certain documents listed in the Schedule attached to the Stamp Duties Act 1976.

When it comes to land transfers, stamp duty is analogous to capital transfer tax: and it can be pretty steep.

For instance, on a sale of a property worth a million dollars, the stamp duty is \$34,000. If you were to gift a million dollar property to your children, the stamp duty would be the same, however, prior to 2005, if you were to leave a million dollar property to your kids in your will, the stamp duty on your estate (if that was all you had) would have been \$87,500.

So you can see where the pressure on those aging parents was coming from.

There is not one property lawyer in Bermuda that doesn't have a horror story about aging parents transferring property to their kids only to have those same parents come back later to ask if the transfer could be undone.

I have seen a parent transfer property one year only to have a child the next year force a sale of the property so he could get his share right there and then.

Homestead Exemption

The Government stepped in to make it so there wouldn't be any financial downside to transferring property to your kids after death. Enter the Primary Family Homestead Exemption (PFHE).

Requirements

You have to apply for the PFHE to the Tax Commissioner on a form which he supplies.

To get the exemption, you have to be Bermudian and have an interest in residential real estate. You don't have to own a whole house, and where a mother and father own a house jointly, both should get the certificate to cover the eventuality where the last of them dies as sole owner of the house so that his or her estate gets the exemption. Along with the application form, you have to send certified copies of your ownership deed, passport with Bermuda Status stamp, and driver's licence or special person's card in to the department.

Strategies

If you have more than one house, you can choose which one you designate.

Choose the most expensive one because that will save your estate the most tax. If you die and forget to apply for the PFHE, your estate representative can do this after you're gone.

However, if you die owning two houses, the house in which you were last resident can only get the PFHE or if you did not live in any of them, then the least expensive house gets it. Of course, if the house in which you live is in a trust, you don't need to do any of this because (unless it becomes vested in you from the trust before you die) you don't own it and it forms no part of your estate.

Also, if two parents own two houses jointly, they could exchange their respective joint interests and each end up owning a house in their own right for which each could then get their own PFHE.

Thereafter, each parent could leave a house to their kids so that both houses are inherited tax free, but the sagacity of this strategy depends on how much one parent will need both houses after their spouse dies and also how much you can trust your kids to do the right thing.

Conclusion

Don't lose sight of why the PFHE was created. It arose so that aging parents didn't have to feel pressured to give away their most valuable asset while they were still alive.

So if you are an aging parent thinking about handing it all over before you die, think twice.

Harry Kessaram is a property attorney with Conyers, Dill & Pearman. This column should not be used as a substitute for professional legal advice. Before proceeding with any matters discussed here, it is advised that you consult with a lawyer.