

What Are the House Ownership Options When Parents and Adult Children Live Together?

Increasingly, several generations of American families are living together. According to a Pew Research Center analysis of U.S. Census data, more than 50 million Americans, or almost 17 percent of the population, live in households containing two adult generations. These multi-generational living arrangements present legal and financial challenges around home ownership.

Multi-generational households may include "boomerang" children who return home after college or other forays out into the world, middle-aged children who have lost jobs in the recent recession, or seniors who no longer can or want to live alone. In many, if not most, cases when mom moves in with daughter and son-in-law or daughter and son-in-law move in with mom, everything works out well for all concerned. But it's important that everyone, including siblings living elsewhere, find answers to questions like these:

1. If mom owns the house, what happens when she passes away? Do daughter and son-in-law have to move out? If mom leaves them the house, is that fair to the other siblings? If she leaves them her savings and investments instead, what happens if that money gets spent down on her care?
2. If mom pays for an in-law addition to be built on daughter and son-in-law's house, what guarantees should she have about being able to live there? What happens if, despite everyone's best intentions, mom moves out either because living together isn't working out or she needs care that the family can't provide? Do the daughter and son-in-law simply get the advantage of the increase in value to their property? What if mom needs the money she put into the house to live on? What are the Medicaid issues if she needs nursing home care within five years?
3. What are everyone's expectations in terms of paying living and housing expenses?
4. What happens if daughter gets a great job offer in another city? Or daughter and son-in-law get divorced?
5. If grandchildren are still living at home, is mom expected to help with child care?
6. How do the answers to all of the questions change if mom and daughter and her husband are pooling their resources to purchase a new home for everyone?
7. Who will care for mom if she becomes disabled? Is daughter expected to give up her work to provide the care? Should she be compensated? What about using up mom's financial resources to pay for care providers?

It is difficult to answer many of these questions in the abstract, but having an open discussion about them at the start, writing down the answers, and reviewing the questions and answers as circumstances change, can help avoid misunderstandings and potential recriminations down the road.

The answers to these questions may lead to different forms of home ownership that can help achieve the family's goals. Here are some of the options:

1. **Joint Ownership.** If mom, daughter, and (perhaps) son-in-law own the house as joint tenants with right of survivorship, when mom passes away the house will go to the other owners without going through probate. This has an advantage if mom ever needs Medicaid to pay for home or nursing home care because it may avoid the state's claim for reimbursement at her death (usually referred to as "estate recovery"). Some states have expanded the definition of estate recovery to include property in which the recipient had an interest but which passes outside of probate, so property in joint ownership may be included in estate recovery in those states. If the house is sold while the owners are alive, the proceeds (absent another agreement) will be divided equally among the co-owners.
2. **Tenants in Common.** If mom, daughter, and son-in-law own the house as tenants in common, mom's share at her death will go to whoever she names in her will. This may be fairer to other family members, but does not avoid probate. As with joint ownership, if the house is sold while all the owners are alive, the proceeds (absent another agreement) will be divided equally among the co-owners.
3. **Life Estate.** A life estate is a form of joint ownership where mom as the "life tenant" has the right to live in the house during her life and at her death it passes automatically to the "remaindermen" who can be anyone she names -- daughter or son-in-law or all of her children equally. Like joint ownership, it avoids probate and thus may also avoid Medicaid estate recovery. If the property is sold, the proceeds are divided up between the mom and whomever is on the deed as remaindermen, the shares being determined based on mom's age at the time -- the older she is, the smaller her share and the larger the share of the remaindermen.
4. **Trust.** Putting the house in trust is the most flexible approach because a trust can say whatever the person creating it wants. It can guarantee mom the right to live in the house and compensate daughter and son-in-law for the care they provide. It can also take into account changes in circumstances, such as daughter passing away before mom. At the same time, it avoids probate and Medicaid estate recovery.

All of these options have different tax results in terms of capital gains when the home is sold, as well as different treatment by Medicaid if mom needs help paying for care. It's best to consult with your attorney to determine what makes the most sense in your particular situation.