

Should I give my children my home now by adding them to my deed? Or should I include them in my will? Here are six things to consider.

Many people who are worried about what will happen to their home when they die ask us whether it would be better to simply add their child's name to their deed. We caution against adding your child to your deed and, in almost all cases, recommend including them in your will instead.

Community Legal Services provides free help to low-income Philadelphians. Among other things, we assist homeowners by drafting and executing wills, powers of attorney, and advanced medical directives.

Here's why homeowners may wish to include their children in their will rather than adding them to the deed.

1. **Your children may still need to go the Register of Wills and raise your estate if you have assets other than your house.** Some people hope to avoid the probate process by adding their child's name directly to the deed. This can work if your home is your only asset, but if you have other assets (for example, a car or a bank account), your heirs will still be required to raise your estate at the Register of Wills. Without a will, your children may not agree on who should administer your estate or how to best honor your wishes.
2. **Your children will still be legally required to pay inheritance tax.** Many people also hope that by adding their child's name to their deed, they might help their children avoid paying inheritance tax. But when a child inherits your interest in the property via deed, they are still legally required to pay the inheritance tax. Adding your child's name as a co-owner to your deed will not allow them to avoid their legal obligation to pay the inheritance tax.
3. **If you have a mortgage, your mortgage company may not let you make changes to your deed, or will make you repay your entire balance if you try to make changes.** If you have a mortgage on your house, your mortgage company may require that you repay the entire balance of the mortgage if the ownership changes on your deed (even if your name remains on it and you are simply adding another). This is because most mortgages have what's called a "Due on Sale" clause which allows the mortgage company to call your mortgage due-and-payable upon any sale or transfer of ownership.
4. **You may lose your Medical Assistance or SSI if you add your child to your deed.** Making changes to your deed might impact your ability to obtain Medical Assistance or

SSI. People who receive SSI or Medical Assistance (sometimes called Medicaid), including in-home nursing assistance, are not permitted to give away their assets for free.

There are a few exceptions to this rule, however. For example, you can add your child to your deed if they:

- Are under age 21;
- Are disabled under the Social Security standards; OR
- Have lived in the home with you for at least two years AND has cared for you so that without the care, you would have needed to live in a nursing home or hospital.

If you give an interest in your house to your child by adding them to your deed, you will need to report this on your next Medical Assistance and SSI renewals, and your benefits may be stopped for a period of months equivalent to the value of the asset that you gave away UNLESS you meet one of the exceptions to this rule.

5. **You may have trouble qualifying for some kinds of Medical Assistance in the future if you add your child to your deed now.** If you do not currently receive Medical Assistance, but believe that you will need to rely on in-home nursing assistance or nursing home care in the next five years, you should also think carefully about adding someone's name to your deed. When you apply for assistance, DHS will ask whether you have given away any property within the last five years. Unless one of the exceptions (some of which are discussed above) applies, you will be ineligible for Medical Assistance for several months. DHS will calculate the exact time period of ineligibility based on the value of interest in your home that you gave away to your children.
6. **If you have an argument with your child in the future, they can go to Court to sell the house without your permission.** When you add someone to your deed, they become co-owners of the property, just like you. That means they will have the same rights and responsibilities as any other owner. For example: they will have claim to live in the home and cannot be easily evicted; they will have the right to go to Court to get an order that the house be sold, and the proceeds of the sale distributed to all co-owners; and if you want to borrow money in the future to make repairs on your home, they will be required to consent to any future mortgages.

Creating a will addresses each of these issues, but without the same risk. Your home will remain in your name until your death, upon which time, and according to the wishes you express in your will, your home will be legally passed to your chosen heir(s).

However, despite the many reasons to create a will instead of adding your child to your deed, there is one important reason why it may make sense for you to add your child to your deed. State law permits Pennsylvania to impose a lien on your house after you die for the value of the nursing home or in-home services that you received if you are at least 55 years old. This is

called a Medicaid Estate Recovery lien. It will then be paid to Pennsylvania if your children sell or transfer the home after you die. By transferring your house to your child, you can avoid a Medicaid Estate Recovery lien but ONLY IF you do not need Medical Assistance for the next five years. If you do need Medical Assistance in the five years after you transfer your house to your child, you may be penalized for having transferred the house to your child.

If you or anyone you know would like to talk with someone about obtaining a will, please email us at wills@clsphila.org or call our Wills Hotline at 484-267-5750.