

by Ilyce_Glink

Q: My grandmother wants to sell her condo to me at a terrific price. The problem is, she's not on title, nor is she on the loan, although she's been living in the apartment for two of the past five years. She bought the condo 10 years ago. Two of her daughters and a son-in-law are on the title and on the loan. She wants to sell the condo to me but is afraid that her daughters will have to pay capital gains tax. Is there any way everyone can avoid paying tax? Can my grandmother just sell the condo to me for the price she paid 10 years ago and avoid capital gains? A: First, your grandmother can't sell something she doesn't own. If she sold or gave the condo to her daughters and their names are on the title and the loan, she no longer has any say about what happens to the condo. On the other hand, she won't owe any taxes if it does sell. Your aunts and uncle, on the other hand, might. You need to have a conversation with your aunts about buying the condo from them. If your grandmother hasn't been paying any of the expenses for the condo, then her daughters may be delighted to have the expense and responsibility of the property off their hands. I have two questions you need to answer before this transaction can take place. First, if you buy the condo, where is your grandmother going to live? Would she move into a nursing home or in with her children? Is she planning to live in the condo with you? Second, I understand that you think capital gains taxes may be owed on this unit. While buying it at the price your grandmother paid 10 years ago sounds like a good plan, whether it will work depends on how much the property has appreciated in value. Will your aunts want to sell to you at the original price? If the property has doubled in value, for example, they may want their share of that price appreciation, especially if they've been paying all the expenses associated with the property. There may be other legal consequences to selling you the condo at a very reduced price. If you decide to go that route, talk to a good accountant about the tax consequences of purchasing a home at less-than-market-value. However, once your aunts set the price, you'll be able to start shopping around for a loan, unless they agree to carry back the mortgage. Hopefully, you'll qualify for an amount that will allow you to buy the condo.

Q: My mother owns the house my wife and I live in. We'd like her to quit claim the deed to us but still hold the mortgage, as this would be advantageous to us. Would we be able to take advantage of the homestead exemption if the property was quit claimed to us? A: Once you own the property, you should be able to take advantage of the homestead exemption. But there are other issues to be considered. First, if the mortgage company finds out your mother has sold or given away the property, they might decide to call the loan. When you take out a mortgage, you pledge the house itself as collateral. If the collateral is gone, what's to stop your mother from deciding not to pay the mortgage? According to the terms and conditions of the typical mortgage, your mother is required to hold title to the property until the mortgage is paid off. Under certain circumstances, however, title to a home can be transferred between family members. Consult a real estate attorney to determine whether your transfer falls within these guidelines. Finally, giving you the house via quit claim deed could play havoc with your mother's estate. You would be given the house at her cost basis. If you wait to inherit the property someday, you would receive it at its current market value. You and your mother should sit down with a real estate attorney or estate planning attorney to develop a plan to help you achieve your goal without leaving your mother vulnerable to a claim on the mortgage.

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