

Owning real estate as part of your investment portfolio can be a powerful means of building wealth and securing a future for your heirs. The “step-up in basis upon death” offers a unique tax advantage, allowing you to pass down real estate assets with minimal tax burdens. However, without careful planning, transferring real estate to heirs can lead to significant challenges, delays, and costs. Let’s explore the common obstacles and how proactive planning can help mitigate these issues.

1 Who Manages the Real Estate Upon Your Death?

If you actively manage your investment properties, who will take over upon your death or if you are incapacitated? An executor or trustee of your estate must handle day-to-day property operations, listings, sales, and distribution of proceeds. This is often a demanding role, and it’s essential to ensure that the person you select is both capable and willing to take on the responsibility.

Probate can be lengthy, costly, and emotionally draining for heirs, particularly if real estate is involved.

- **Executor/Trustee Selection:** Have you formally appointed a competent individual who understands your expectations? Will they serve for free, or is there an agreement for “reasonable compensation”? If so, how will this impact the value of the estate left to your heirs?
- **Backup Options:** Who will manage the real estate if your primary choice is unable to do so? While many rely on a bank’s trust department, doing so can result in significant delays, high fees, and a lack of personalized care.

2 Attorney Fees and Avoiding Probate

Real estate holdings can be complex and expensive to navigate through probate, often resulting in significant attorney fees. Without thorough and proactive estate planning, this process can become a major burden for the trustee or executor. Probate can be lengthy, costly, and emotionally draining for heirs, particularly if real estate is involved.

- **Multi-State Property Holdings:** If you own properties in multiple states, this can lead to complex legal challenges and additional costs, as attorneys in each state may need to be involved in settling the estate.
- **Preventing Probate:** Have you created a trust or a similar legal framework to bypass probate? This minimizes potential public challenges, reduces delays, and provides clear instructions for distributing assets.

3 Broker Fees in Selling Real Estate

During your lifetime, you may know potential buyers for your properties or even have the ability to sell them yourself. However, your heirs may not have the same expertise, and selling real estate typically involves broker fees.

- **Market Knowledge:** Have you provided a trusted contact or advisor who can help guide the sale process, or do you have connections in the real estate community that can assist?
- **Sales Strategy:** Do your heirs understand your preferred process for selling the properties, or have

you considered how broker fees might impact the overall legacy?

4 Timing and Economic Conditions

Real estate markets fluctuate, and passing down assets during a downturn can significantly impact the legacy you leave.

- **Market Conditions:** While it's impossible to predict the economy at the time of death, a well-documented estate plan allows heirs to make informed decisions based on current conditions.
- **Preparing for Flexibility:** Consider establishing guidelines for holding or selling real estate that accounts for varying market conditions.

Wouldn't it be better to select the right time to sell the property instead of leaving it up to chance?

5 Do Your Heirs Want Real Estate or Cash?

Each heir's goals and financial situations are unique, and some may prefer a cash inheritance over real estate.

- **Heir Buyouts:** If some heirs want to retain property while others do not, a buyout arrangement might be necessary. This requires liquidity, which could impact the estate.
- **Legal Protections:** Have you addressed potential issues, such as divorce, creditor claims, or financial instability, that could affect your heirs' ability to hold onto or manage real estate?

6 Time Required to Sell

Real estate sales are rarely immediate. From preparing properties for sale to finding a buyer and closing the deal, the process can take time, impacting heirs' access to their inheritance.

Have you reviewed the terms of any mortgages to determine what happens upon your death?

- **Timeline Expectations:** Have you communicated realistic timelines for the selling process? Consider including a guide for getting properties ready for sale and appointing a trusted commercial broker to manage the sale efficiently.
- **Accessible Records:** Do you have accurate and complete property records easily accessible to the executor or trustee? Providing this documentation can save time and reduce administrative burdens.

7 Loans and Mortgages

If there are outstanding loans on the properties, they may become "callable" upon death, meaning lenders could demand immediate payment.

- **Loan Terms:** Have you reviewed the terms of any mortgages to determine what happens upon your death? Understanding these terms will help your heirs avoid unexpected financial strain or the forced sale of assets.
- **Contingency Planning:** Consider setting aside liquidity or creating a trust with provisions to address callable loans.

8 Involving Other Partners in Property Ownership

Properties co-owned with partners require additional planning to ensure a smooth transition upon your death.

- **Buy-Sell Agreements:** Ensure that you have written agreements with partners detailing how your share of the property will be handled.
- **LLC Operating Agreements:** Do you have a formal operating agreement in place? This document is always essential but becomes especially critical if the LLC is included in your estate plan.

- **Consequences for Non-Compliance:** A legally binding agreement with clear consequences for non-compliance protects your estate from potential disputes with partners or other parties involved in ownership.
- **Multi-Partner Owned Holdings:** If you co-own properties with one or more partners, have they addressed their own estate plans? It's important to ask and confirm what steps they've taken to ensure a smooth and clear transfer of their ownership interests.

- **Tax Considerations:** Tax deductions for medical expenses may reduce some costs but won't necessarily offset capital gains and depreciation recapture taxes if real estate is sold to pay for care.

Wouldn't it be wiser to sell on your terms with a well-thought-out plan rather than being forced to sell due to unexpected long-term care expenses?

Conclusion: Planning for a Smooth Transition

Each challenge outlined above is interconnected. Waiting solely for the "step-up in basis" can create more problems than it solves if your estate lacks a complete, written legacy plan. A detailed plan mitigates potential conflicts, avoids delays, and protects the relationships among your heirs.

At **Shepherd Financial Advisors**, we encourage a proactive approach to estate planning. Document every decision, prepare for potential challenges, and make essential commitments while communicating clearly with all involved parties. Keep your hard-earned capital working for you while retiring from being a landlord.

Waiting solely for the "step-up in basis" can create more problems than it solves if your estate lacks a complete, written legacy plan.

Schedule a no-cost, no-obligation discovery session with us today to explore your goals, needs, and priorities in estate planning. Let's work together to build a legacy plan that protects your hard-earned assets and secures your family's future.

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If you co-own properties with one or more partners, have they addressed their own estate plans?

9 Real Estate Condition and Maintenance

The state of the property at the time of your death may impact the ease of sale and overall value.

- **Property Condition:** Are properties well-maintained, or will repairs and updates be necessary to maximize sale value?
- **Maintenance Provisions:** Consider setting aside funds for property maintenance and detailing these plans in your estate.

Would you prefer your heirs to take on the responsibility of handling maintenance and necessary updates, or would it be more beneficial to sell the property after completing updates and implementing rent increases?

10 Long-Term Care, Memory Care, and Other End-of-Life Challenges

The increasing likelihood of needing long-term care complicates estate planning, as liquidating real estate to cover care costs can reduce the estate significantly.

- **Long-Term Care Insurance:** Have you considered long-term care insurance to protect your estate from the need to sell assets to cover care costs?