

FAMILY PROPERTY TRANSFERS 5 CRITICAL QUESTIONS



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Family Property Transfer: 5 Critical Questions

Before You Start the Process

Transferring property between family members seems straightforward - change the names on the title, and you're done. In reality, these transfers involve complex legal and tax considerations that can have significant consequences for years to come.

Before you proceed with any family property transfer in NSW, working through these five questions helps you understand what's actually involved and what matters most for your specific situation. The answers often surprise families who assumed the process would be simple.

QUESTION 1

Have you calculated the actual stamp duty liability?

Many families assume that transferring property to children or other family members avoids stamp duty, or that stamp duty is calculated on what you're actually paying. Neither is correct.

In NSW, stamp duty is calculated on the property's full market value regardless of whether money changes hands. If you're gifting a \$900,000 property to your child, stamp duty is approximately \$35,000 - payable even though no sale occurs.

Why this matters: Unexpected stamp duty costs derail many family transfers. Understanding the liability early allows proper planning and ensures the transfer can actually proceed when you're ready.

QUESTION 2

What's your capital gains tax exposure?

Under the Income Tax Assessment Act 1997 (Cth), transferring property to family members triggers a CGT event at market value. This applies even for gifts where no money is paid.

If you purchased an investment property for \$400,000 and it's now worth \$900,000, the transfer creates a \$500,000 capital gain. After the 50% CGT discount, you could face a tax liability exceeding \$100,000.

Why this matters: CGT liability hits in the year of transfer, creating immediate tax obligations many families haven't budgeted for. The recipient also inherits your low cost base, potentially creating future tax problems when they eventually sell.

QUESTION 3

How will this affect your Centrelink eligibility?

Under the Social Security Act 1991 (Cth), transfers for less than market value are treated as "deprived assets" for pension purposes. Services Australia may treat you as still owning the property for up to five years after the transfer.

If you're approaching pension age, a \$800,000 property transfer could disqualify you from the age pension for years, representing tens of thousands of dollars in lost benefits.

Why this matters: Timing matters enormously. Transfers made well before retirement allow these deprivation provisions to pass. Transfers made close to pension age can create complications that proper advance planning easily avoids.

QUESTION 4

What happens if family relationships change?

Property transfers are permanent. Once completed, you can't simply undo them if circumstances change - relationships deteriorate, financial difficulties arise, or family dynamics shift.

Without proper documentation, informal family arrangements become complicated if the recipient faces bankruptcy, relationship breakdown, or simply decides to sell the property against your wishes.

Why this matters: Proper legal documentation protects all parties and provides clear frameworks for managing the property after transfer. Alternative structures like staged transfers or vendor finance arrangements can provide more flexibility than outright gifts.

QUESTION 5

Have you considered the impact on other family members?

Transferring property to one child affects your overall estate planning and can create perceived unfairness among siblings. What seems like helping one child can inadvertently create family disputes that last for generations.

Clear documentation of intentions, consideration of estate equalisation strategies, and open family communication help manage these relationship dynamics before they become problems.

Why this matters: Family harmony often matters more than tax efficiency. Understanding how to structure transfers fairly, document intentions clearly, and communicate openly prevents disputes that tear families apart after your death.

IMPORTANT NOTE

These five questions highlight the key considerations for family property transfers, but every situation is unique. The right approach depends on your specific family circumstances, financial position, relationship dynamics, and long-term objectives. Professional legal and tax advice tailored to your situation ensures you make decisions that truly serve your family's interests.

READY TO START YOUR FAMILY PROPERTY TRANSFER?

Next Steps: From Questions to Answers

You've identified the critical questions that matter for family property transfers. Now let's work through your specific answers together and structure your transfer to achieve your family objectives while managing legal and tax implications effectively.

I work with families to navigate property transfers strategically, addressing these considerations and ensuring proper compliance with NSW requirements. Together, we can structure your transfer to protect your family's interests and support your long-term goals.

Ready to discuss your family property transfer with expert guidance? Contact Jackie Atchison at LexAlia Property & Commercial Law to explore how your specific situation can be handled effectively.

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