

To Gift or Not to Gift? That is the Question

Grandparents are often particularly generous to grandchildren as they see their family's legacy continuing on to a new generation, and helping out family members is to be encouraged, but can raise a number of legal issues involving taxes and eligibility for public benefits as well as questions of fairness among family members. To Gift or Not to Gift? That is the Question. Well, here are six issues grandparents should consider before making gifts to family members:

- 1. Is it really a gift?** Does the grandparent expect anything in return, for example that the funds be repaid or that the money is an advance on the grandchild's eventual inheritance? In most cases, the answer is "no." But if it's "yes," this should be made clear, preferably in writing, whether in a letter that goes with the check or, in the case of a loan, a formal promissory note.
- 2. Is everyone being treated equally?** Not all grandchildren have the same financial needs, and sometimes grandparents don't feel equally close to all of their grandchildren. While it's the grandparent's money and she can do what she wants with it, unequal generosity may create resentment within the family. Many elder law clients say that what they do with their money during their lives is their business. They may help out some children and grandchildren more than others based on need, with the expectation that this will be kept private, but they treat all of their children equally in their estate plan.
- 3. Beware taxable gifts.** While this is academic for most people under today's tax law, since there is no gift tax for the first \$5.25 million each of us gives away, any gift to an individual in excess of \$14,000 per year must be reported on a gift tax return, even though there is no tax due. Two grandparents together can give up to \$28,000 per recipient per year with no reporting requirement. And there is no limit or reporting requirement for payments made directly to medical and educational institutions for health care expenses and tuition for others.
- 4. 529 plans.** Many grandparents want to help pay higher education tuition for grandchildren, especially given the incredibly high cost of college and graduate school today, but not all grandchildren are the same age, making it difficult to be sure that they all receive the same grandparental assistance. Some grandchildren may still be in diapers while others are getting their doctorates. A great solution is to fund 529 accounts for each grandchild. These are special accounts that grow tax deferred; the income and growth are never taxed as long as the funds are used for higher education expenses.
- 5. Beware the need for long-term care.** In terms of making certain that they have kept enough of their own savings, grandparents

need to consider the possibility of needing care, whether at home, in assisted living or in a nursing home, all of which can be very expensive. In addition, those seniors who can't afford to pay for such care from their own funds need to be aware that any gift can make them ineligible for Medicaid benefits.

- 6. The child is disabled and on Social Security Income and Medicaid.** If you want to gift money or property to a loved one with a disability, you must plan carefully. A way around losing eligibility for SSI or Medicaid is to create a special needs or supplemental needs trust. Then, instead of gifting property directly to the grandchild, you leave it to the special needs trust. Because your loved one will have no control over the money, SSI and Medicaid will ignore the trust property for program eligibility purposes.

There are many issues to consider that involve specific family situations. Some grandchildren shouldn't receive gifts because they may have addiction issues, or the gifts may undermine the parents' plans or their authority. Grandparents may also want to consider a trust, which provides that the funds will be distributed when grandchildren reach certain milestones, such as graduation from college or holding down a job for a period of time. Sitting with an elder law attorney can be key to making certain that gifts achieve the best results for all concerned.

Nursing Home Worries?

Are You Worried about Losing Your Home or Life Savings to the Cost of a Nursing Home?

Are You Concerned About How to Pay for Your Loved One's Expensive Nursing Home Care Without Going Broke?

Do You Want to Avoid Placing Your Loved One in a Nursing Home?

Are you a Veteran and Interested in Possibly Receiving an extra \$2100 a Month?

Are you the Spouse of a Veteran and Interested in Possibly Receiving an Extra \$1100 a Month?

In Pennsylvania, the Average cost of a Nursing Home is over \$97,000 per year.

How Much Can You Afford? Are You Prepared? Call Zacharia & Brown



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