Is it Wise to Make Gifts to Adult Children?

Parents often want to give their adult children their wealth during the parents' own lifetime, rather than have the children wait for an inheritance. The decision to give to children must be made carefully after considering all the consequences and potential unforeseen events. Consider these factors:

- Loss of control over the funds or property once they are gifted
- Future change to your health or financial situation
- Exposure of the funds or property to the children's creditors, spouses or heirs
- Effect on the children's work ethic or lifestyle
- Potential undue influence on you by the children to make the gift
- Effect on the distribution of your estate
- Income taxes

Below are some answers to the most frequently asked questions about gifts to children:

How can I help my child purchase a home?

You can avoid some of the above pitfalls by registering a mortgage against the property. The mortgage can be forgiven in your Will or offset against the child's inheritance.

Will the gift be taxable?

In Canada there is no *gift tax* but there is capital gains tax if the gift consists of capital property with an unrealized capital gain. One exception would be your principal residence as it generally qualifies for a capital gains exemption. This exemption of capital gain would take place in any event, including with respect to the proceeds of sale from the sale of your home during your lifetime or, the sale of your home by the executor of your estate, after your death. In addition, if you sell your home during your lifetime and give your child the cash proceeds, you could save your estate the probate fee which would otherwise be imposed on the estate after your death, based on the value of your home. Capital gains tax will also apply if the capital property is sold to the child for less than fair market value.

Will my son-in-law or daughter-in-law have a right to the gift in the event of marriage breakdown?

Each province in Canada has different rules that offer varying degrees of protection for property received by gift or inheritance. A consideration would be how the child intends to maintain the ownership of the gifted funds going forward. If the gift is comingled in his/her community property it may lose its potential protection of gifted property. This protection may be available in the context of a property claim on marriage breakdown, or with respect to a claim against the estate of a deceased spouse. However, the statutory protection may not be sufficient because there are many exceptions and they are strictly interpreted. In addition, children may move from one province to another, making it uncertain what the applicable law will be in the future. Transferring the gifted property to a Trust is sometimes recommended. In addition to offering some protection from spousal claims, it can also prevent the child from voluntarily transferring the property to the spouse. It is important that the Trust you create is a discretionary Trust and that your child, if he or she is one of the Trustees, does not have veto power over Trust property. It is recommended that you are not a Trustee of the Trust.

Alternate Strategies

You may decide to register a mortgage against a home which you have purchased for your child is one way to protect your assets. If the gift you are contemplating is not real estate but rather, cash, you may want to consider simply creating a debt where you are the creditor and your child and his or her spouse, jointly, are the debtors, in an amount equal to the value of the gift. This can be achieved by way of a loan agreement with an accompanying demand promissory note. Properly structured, such an agreement would be an enforceable contract which you may use to demand repayment, to protect your assets, in the event of marriage breakdown between your child and his or her spouse.

You may decide to re-examine your intentions to make gifts to your adult children once all the known and potential consequences are considered.

As previously stated, a good option may be to create a Trust so that the property being set aside for the children can still be used for the children's benefit without complete loss of control. In addition, the Trust may protect the property from those making claims against your children. Professional advice is essential if the Trust route is chosen to ensure that it provides the appropriate protection for your circumstances and avoids certain tax traps.

You should seek independent legal advice if you want to make large gifts to your adult children. A safe philosophy for gifting to children is *never give away anything that you may need or want back.* Remember, once the gift is made, there is no reversing it.

Your BMO Nesbitt Burns Investment Advisor can assist you in locating an estate planning specialist.

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*Some terms are capitalized for purposes of greater clarity in the context of this discussion only.
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