

Planning Matters

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Six Tips for Helping Your Grown Children Financially

FALL 2020 EDITION

A wise client once said to me that they wanted to give their children a “hand up, not a hand-out.” This guiding principle regularly informs the advice I offer clients making gifts of substance to their adult children. In these times of COVID, youth unemployment (and under-employment) is substantially higher than average and young adults in many markets face shockingly high real estate prices. Those fortunate enough to have accumulated sufficient assets to fund not only their retirements but to pass on to their children don’t necessarily want to wait until they die to share the wealth, so I encourage my clients with comfortable savings to start their giving early.

Putting those assets to work for your adult children earlier than later can drastically alter their paths in life, as compared to receiving a nest egg in their 50s or 60s. In addition, **you** can see the impact that your gifts make in your children’s lives (both for better and potentially for worse), allowing you time to change course if necessary.

This article examines best practices for giving during your child’s early adult life, after they’ve completed their education. Whether it is a down-payment on a house, a wedding gift, or a loan to start a business, you want to help those children but without potentially losing or limiting the impact of these funds due to relationship breakdowns or bankruptcy.

Tip #1: Gifts and inheritances are not shared property for marital property regimes.

A gift or inheritance given to a child is generally not shared property for family property regimes, provided we take the effort to be clear that it is a gift *to that child* and not to the child and their spouse/partner. This differentiation means that the gift would not be counted as joint family property if there was ever a marital breakdown. Note, however, that this rule can be defeated in circumstances where the assets have become comingled with other assets of the family – such as where the amount has been used to pay down a mortgage on the family home or where the monetary gift has been combined into a joint investment account.

Gifts should be clearly made, preferably with documentation at the time such as a “deed of gift” or at a minimum some supporting email correspondence, that clearly sets out the parameters of the gift, if there are any. For example, if the gift is to your child, you may explicitly specify that it is not made with the intention of benefitting their spouse, or that it may be limited to a specific purpose. Clear evidence helps this.

Tip #2: Relationship agreements are always a good idea.

Cohabitation agreements, pre-nuptial agreements, or even post-nuptial agreements permit your child and their spouse to specifically identify and waive any interest they may in gifts and inheritances from their in-laws, whether such gift amounts have been comingled or not. Parents can (and perhaps should)

make this a condition of the gift, and some even cover the legal fees. Each spouse will need independent legal advice, and expert family law advice should be obtained.

Tip #3: Document gifts or forgivable loans for home down payments.

I often encounter parents interested in helping their children obtain financing on their first home, typically by gifting funds for the down payment. Banks may sometimes request a declaration that the amount given to the child is a gift and is not repayable. If so, you may wish to substantiate the amount of the gift within the declaration, as well as the fact that it is to the child and not to the child and the spouse jointly. This clarification may help exclude the gift from a marital property settlement in the future.

Where the bank does not require the gift letter and the sums are larger, you may consider lending the funds on a long-term, forgivable basis to the child, secured by way of a mortgage on the real property. If there is other financing, it is likely that you will be required to be a second charge on the real property, but you could preserve your rights by registering the loan of money to your child against the property. This strategy should enable you to be repaid on the sale of the family residence in the case of a relationship breakdown of your child and their partner, or you could obtain some protection if your child were to fall into bankruptcy. As a secured creditor, you stand a much higher chance of a full recovery relative to an undocumented transfer of funds in years past.



“Fair” and “equal” need not be the same thing, as the level of support that is appropriate for each child may in fact be different

Some parents have opted to purchase the home outright and hold the home in a trust for the child, with the parents holding power of trustee. The goal of using this structure historically was to access the capital gains tax exemption, but this ability is now significantly limited. You may still be able to use a trust but must distribute the property to the child prior to sale to exempt the gain – which would end control of the parent over those funds and potentially expose them to inclusion in marital property division.

Tip #4: Establish yourself as a secured lender for any business loans.

A similar strategy should apply when structuring a loan to a child to start a business: consider taking a secured lender position (albeit likely behind the bank), but clearly set out the terms of the loan with your child at the time the loan is made. Should the business falter, or a sale is forced upon dissolution of a relationship, as a secured lender you are more likely to recover the funds.

Tip #5: There are many ways to achieve fairness and equality in giving among your children.

My clients often struggle with trying to keep things “fair” between their children. My advice is generally that “fair” and “equal” need not be the same thing, as the level of support that is appropriate for each child may in fact be different – and that may be the case both during your life and at death. I always recommend speaking openly with your children about the details of your giving, as they will likely talk amongst themselves anyway and secrecy can build resentment. When you do, they may acknowledge that one of them needs more than the other, and may be satisfied with the support being unequal or with differences being “caught up” at the passing of the parents.

To avoid the conflict or confusion, many parents just strive to make the giving equal. A few ways to accomplish this include:

- Keeping accurate lists of what has been given to each child;
- Clarifying what is a loan (to be repaid) and what is a gift; and
- Employing a “hotchpot clause” in your will.

A hotchpot clause takes into account the gifts made during the lifetime, as a sort of advance on the inheritance. After your passing, those amounts can then be settled in whatever fashion you like, prior to the generally equal division of the assets amongst your children.

If you have made a loan to your children, the place to forgive that loan is in your will (or the loan document itself). Debt forgiveness during your lifetime can have tax consequences in certain circumstances, but the debt forgiveness rules generally don’t apply on your death.

Tip #6: Utilize family trusts for effective tax planning and to protect the capital.

I am a strong believer in the flexibility offered by utilizing family trusts in tax and estate planning. As a very basic structure, the parent lends money to a family trust at the prescribed rate (currently 1%). The interest is paid annually, and the capital can be repaid at any time. Whatever the trust earns over and above that interest from the loaned funds can be paid out to and taxed in the hands of a beneficiary. While the tax on split income rules (or TOSI rules) were broadened in 2017, this strategy can still work to allow the income from publicly traded investments to be distributed to and taxed in the hands of any beneficiary (related or not, adult or minor). You can use the trust to pay for expenses on behalf of the child or grandchild (even reimbursing expenses) rather than just distributing the money and hoping for the best use of those funds.

One attractive feature of a family trust is that the lender can be fully in control of the capital, and the gifting. You can distribute funds as needed and help shield investment income from taxes (as they are taxed in the hands of the child or grandchild, who is likely in a lower tax bracket). Beneficiaries do not have any legal entitlement to the capital or any enforceable right to any income – which can be an effective legal protection in the event of divorce or bankruptcy.

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NOTE: *The contents of this article are not intended to represent legal advice. Please consult your lawyer and/or accountant before employing any strategies discussed here.*

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