Questions to Consider Before Making Gifts

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Many seniors consider gifting assets for long-term care planning purposes or just to help a child or other loved one in need. Did you know that some gifts can cause major problems for both the generous donor and the recipient? Here are a few points to ask yourself before writing that check:

What is a gift? If you transfer an asset (e.g., you write a check to someone without intending to be paid back, transfer an account ownership to someone else, buy a car for someone, to name a few). Any transfer that you make, however innocent, could come under scrutiny if you need long-term care. Should you enter a long-term care facility and if you do not have documentation showing that you received fair market value in return for a transferred asset, you could be subject to a transfer penalty.

Why are you making the gift? Is it simply an expression of love on a birthday or to celebrate a major life event, such as a graduation or wedding? Or is it to protect assets from the cost of long-term care? If the latter, ensure there is really a true benefit to the transfer. Gifts can cause up to five years of ineligibility for long-term Medicaid/MassHealth, which you may need to help pay your long-term care costs in the future.

Are you keeping enough money for yourself? If you are making small gifts, you might not need to worry about this question. But before making large gifts, please do some budgeting to ensure that you will not run short of funds for your basic needs, activities you enjoy – which may include traveling, taking courses, or going out to eat – and emergencies such as the need for care for yourself or to assist someone in financial trouble. Once you gift something it may be difficult, if not impossible, to get the asset back.

Is it really a gift or is it a loan? Are you expecting the money to be paid back or for the recipient to perform some task for you in return? In either case, make sure that the beneficiary of your generosity is on the same page as you. The best way to do this is in writing, with a promissory note in the case of a loan or an agreement if you have an expectation that certain tasks will be performed. (e.g., a care contract).

There is a difference between a moral obligation and a legal one. Often a client will tell us "I am gifting this money to my son so he will provide for my wife after I am gone." If you do not use a trust when you gift to an individual, you do so with no (legal) strings attached. While you may have the utmost trust in your loved one, the risk is your expectations may not be realized if the recipient does not do what you want or runs into unforeseen circumstances such as bankruptcy, a lawsuit, divorce, illness, or death. If the idea is to make the gifts with expectations, it is best to create a trust to ensure that they are honored.

Is the gift good for the recipient? If the recipient is low-income or has a disability, the gift could make them ineligible for various public benefits, such as Medicaid/MassHealth, Supplemental Security Income (SSI), or subsidized housing. On a different note, if the recipient has issues with impulsive spending (e.g., drugs, alcohol, gambling), they could use the gifted funds to further the habit. Often, there are better ways to gift to individuals who may not benefit from traditional informal gifting (e.g., special needs or asset protection trust).

As you can see, the act of gifting is more complicated than most realize. There may be a safer way to gift. Typically, gifts and transfers to a properly drafted trust may make a lot of sense. Often trusts can save money in estate taxes, capital gains, and protect from the cost of long-term care, to name a few benefits. It is advised to check with a qualified elder law attorney to discuss the Medicaid/MassHealth, tax, and other possible implications of your generosity.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.

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