

Advantages of lifetime gifting law equity essay

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While many individuals or couples plan to distribute assets after death through the probate process; better options may be available. There are several advantages to making lifetime gifts instead of waiting until death. Some of the more obvious advantages of lifetime gifts are that support payments, qualified transfers, future appreciation on transferred assets, and future income on transferred assets. Along with that another benefit is transfer tax paid for gifts made more than three years before death are all excluded from the gross estate. While all of these are great reasons to take advantage of lifetime gifting, many more benefits can be obtained. The basic rule for gifting is that, in 2013, \$14, 000 can be gifted to any number of people each year without paying any gift tax. The gift can consist of cash, property, or both, as long as the value doesn't exceed this limit. This basic rule is known as the annual gift tax exclusion and is subject to change each year. For instance, from the year 2009 through 2012, the annual gift tax exclusion was \$13, 000. This amount changes because of the rising costs of living. When gifts like these are made, the amount of the gift is deducted from the donor's gross estate. This may not sound extremely beneficial, but if a person were to use this annual exclusion on just one person each year for 20 years, it would amount to almost \$280, 000. With an estate tax rate of 40%, this would prevent a client from paying taxes of \$112, 000.[i]In addition to the annual gift tax exclusion, in 2013, there is a lifetime applicable gift tax exclusion of \$5, 250, 000. This exclusion allows the donor to make gifts in excess of the \$14, 000 annual exclusion amount. The amount that exceeds \$14, 000 can be excluded using the lifetime applicable credit to the extent that the total lifetime gifts that exceed \$14, 000 doesn't exceed the lifetime applicable credit amount. For example, if a gift of \$24,

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000 is given, \$14, 000 is excluded from gift tax and only the \$10, 000 remaining would be applied to the lifetime applicable gift tax credit, assuming they have at least \$10, 000 remaining in their lifetime credit.

[ii]Robert Clofine states in his article " Lifetime Gifts": " In addition to saving death taxes, income tax savings are also possible through the use of lifetime gifts. Although certain provisions of the tax law restrict your options, you can still achieve income tax savings by giving income-producing property to those in lower tax brackets. For instance, if interest on your certificates of deposit are taxed to you at 35 percent, you may be able to pocket 25 percent more by giving the funds to a family member in the 10 percent tax bracket." [iii] Along with what Robert is discussing regarding tax savings, lifetime gifts can also be beneficial if they are to a charity because during life the charitable gifts are income tax deductions but that option does not exist once the individual is deceased. Another advantage that is very appealing when it comes to making lifetime gifts is that the donee knows exactly who is receiving the gift. If the asset is not included in the decedent's will or the decedent doesn't have a will, the asset could be left to state intestacy law and will be subject to estate taxes. If the assets are left to state intestacy laws, there is a certain order that the assets are distributed to the decedent's heirs, so the asset may not transfer to the person the decedent would have wanted. [iv] Another reason to consider lifetime gifting is because it allows you to see how the recipient of the gift is going to manage their assets. This can be helpful in deciding whether you want to make an outright gift to someone or whether you want to put it the asset in a trust. If the assets are put in a trust, the donor can choose when they want the donee to start managing the assets in the trust. This can be a great way to

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gift assets to a minor because you can choose to wait until they are mature enough to make smart decisions with the assets.[v]Lifetime gifts are also convenient because of their privacy. The only people that need to know about the gift are the donor, the donee, and possibly the tax authorities if any taxes are due pertaining to the gift. This will also help prevent any contests to the will of the decedent because the gift will not be included in the estate of the donor. Even if the will were to be contested, the person who contests the will wouldn't be able to do anything about a gift made during the donor's lifetime because it wouldn't be included in the estate and wouldn't be subject to the probate process.[vi]Unmarried couples or people in nontraditional relationships can take advantage of lifetime gifts as well. Nontraditional relationships are relationships such as same-sex relationships or a relationship where there is a substantial age difference between the two partners. Since the unlimited marital deduction is not available to them, lifetime gifts are a way that one could transfer their assets to their nontraditional partner.[vii]As for married couples, they can also take advantage of the gift-splitting option. The gift-splitting option gives married couples the benefit of being able to gift \$28, 000 combined to each donee each year provided they file the necessary gift tax form. The gift-splitting option may not be necessary for gifts of cash or gifts valued under \$14, 000, but it may come in handy if the gift exceeds that amount so that they don't have to use part of their lifetime applicable gift tax credit.[viii]Being able to see the donee receive the gift is also a benefit of lifetime gifting. If the assets are left in the estate, the donor not only can't be certain that the assets will transfer to the intended donee, but they also won't be able to see them enjoy the gift. Lifetime gifting would also allow the donor to make a <https://assignbuster.com/advantages-of-lifetime-gifting-law-equity-essay/>

gift to someone when they may need it the most.[ix]Lifetime gifting can be especially beneficial for wealthier families. If they have assets in excess of the applicable estate tax credit, \$5, 250, 000 for 2013, they can make lifetime gifts to reduce their gross estate, hence reducing their estate taxes. Each spouse of a married couple is allowed the \$5, 250, 000 estate tax credit and gifts made to a spouse aren't taxable.[x]This makes gifts to a spouse a very useful tool in estate planning. If one spouse's estate exceeds the estate tax credit and the other spouse's estate doesn't exceed the limit, the wealthier spouse can make gifts to the other spouse to fully take advantage of both of their estate tax credits. Another Benefit of lifetime gifts would be planning for long-term care. Long term care in a nursing home can be very expensive. According to the Metlife 2012 Market Survey on Long term care, the average monthly cost of living is \$3550 which is just a base rate and other charges can accrue as well.[xi]Medicaid can be a huge benefit to an individual who requires long term care because those monthly cost can deplete an individual's assets rapidly or even deplete your spouse's assets as well if the individual is married. Medicaid has eligibility requirements though, according to payingforseniorcare.com, the individual must necessitate the care, as of 2013 no more than \$2, 130 can be monthly income and the individual must have assets in the range of \$1, 000 to \$15, 000 but this varies by state and most states have an asset level of \$2000. [xii]As a result it should be clear that if diseases requiring long term care are prevalent in your family one should plan to also require long term care sometime in the future. This is important not only to pass assets to those you want and take advantage of Medicaid but, as stated above it can also be very beneficial if one spouse will require long term care and not the other.

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Various trusts can be established to effectively separate the income and assets between the couple. According to payforseniorcare.com, the healthy spouse is considered a "community spouse" and his/her income and/or assets can be separated from the unhealthy spouse which allows the one to qualify for Medicaid and the other to continue to live the style of life they are used to. Along with that they state that properly transferring income and/or assets can be very difficult and not only does one need to contact a professional regarding estate planning but they should also contact someone who specialized in the rules surrounding Medicaid.[xiii] All-in-all estate planning is very essential and an important aspect of that plan is how to take advantage of lifetime gifts to lower income and estate taxes, to hold a trial to observe how those you intend to gift to will use assets, to keep your estate as private as possible, to ensure wealth passes to an unmarried partner, to support those who need it, to ensure gifts are passed to those you intend, to keep wealth in the family line and to prepare for long term care if needed. While having finances to live life is necessary, driving down the number of total assets possessed before death is beneficial to any client.