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Legal Notes – Gifts Again



This is the third article in a series about making gifts.

After all the dire warnings in my last two articles, I would like to focus on some of the positive aspects of making gifts.

There are two popular sayings which quickly spring to mind on the subject of lifetime giving: ‘There are no pockets in shrouds.’ and ‘It is better to give with warm hands.’ No one has yet found a way to take the worldly goods with them when they die; although the Egyptian Pharaohs tried their best. The pleasure of giving is often considered to be greater than that of receiving. Benefiting from a gift sooner rather than later can alleviate financial need at the time when it is truly required. It can also allow a younger person to get their foot on the first rung of the housing ladder before it gets pulled up and forever out of reach.

There are other slightly more technical reasons than just the rosy glow of benevolence.

From an Inheritance Tax planning point of view, provided of course that the giver is left with enough to continue their standard of living and to provide for a ‘rainy day’, it is the usual mantra of ‘Give as much as you can, as soon as you can and live as long as you can.’ that applies. Generally, gifts made more than seven years before death pass to the recipient Inheritance Tax free. In handing over assets during one’s life there can also be savings in the cost of administering the estate following a death and it can reduce the unavoidable delays of Probate in processing an estate on death.

In some carefully assessed and planned circumstances, the need to sell assets to pay for care fees can be avoided. The assets given may, in much the same way, not be taken into account if the person has to undergo means-testing for benefits or publicly-funded services.

Should the person making the gift lose mental capacity and no Power of Attorney (Enduring or Lasting) be in place, it can avoid the expense and delay in applying to the Court of Protection for a Court Order to manage, sell or otherwise deal with the asset.

Attorneys are often surprised to discover that it is usually not straight-forward and often not even possible for them to make gifts on behalf of the person who appointed them. Gifts of a ‘seasonal nature’ are permitted without Court authority but otherwise the Court’s approval to such gifts must be obtained in order for those gifts to be valid. It is difficult, expensive and slow to obtain the Court’s approval to make larger gifts on behalf of an attorney.

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If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Wells office on 01328 710210 or email law@hayes-storr.com.

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