

Giving it All Away (Or at Least Some of It)

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Every December my clients ask whether or not it makes sense to make gifts to their loved ones. In addition to getting to hear “thank you”, there are several advantages to giving assets away before you die, with few disadvantages.

GIFT AND INCOME TAX IMPLICATIONS. Despite common misconception, Massachusetts has no gift tax. There is also a myth that a federal gift tax applies if you give someone more than \$15,000 in a year; but federal gift tax only applies when you have exceeded your lifetime giving limit, which is now over \$11M. However, you still are required to file a federal gift tax return to report the gift if it's over \$15,000, even though no tax is due.

MASSACHUSETTS ESTATE TAX. The amounts you give away will be subtracted from your taxable estate for Massachusetts estate tax purposes, thereby reducing the estate tax that would otherwise be owed. This applies even if you give assets away the day before you die, so you may want to talk with your agent named in your Power of Attorney (you **must** have a Durable Power of Attorney) about giving things away shortly before you die if it appears that you are failing.

HELPING TO AVOID PROBATE. Gifting can also be a handy way to avoid probate. Once again, talk with your agent under your Power of Attorney about giving assets away if you are failing.

THINGS TO CONSIDER BEFORE MAKING ANY GIFTS. If your health deteriorates and you need to qualify for MassHealth within the next five

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years, the MassHealth caseworker may require that the gift be given back before you can qualify. If you are thinking about giving away so-called “capital gains” property like real estate and stock, it may be more advantageous to the recipient if you leave it to them at death, so they can take advantage of something called the “step up in basis.”

It is important that you consult your accountant and lawyer before you make any large gifts. I will be discussing gifting in more depth during this month’s elder law virtual seminar, which can be watched on Frank and Mary’s YouTube channel, www.youtube.com/elderlawfrankandmary and local cable stations, along with Frank and Mary’s weekly local cable TV shows, where my co-hosts and I address many common issues facing seniors and the resources available during the pandemic. As always, if you have any questions or would like additional information, please contact me at (508) 860-1470 or abergeon@mirickoconnell.com.