Six Things to Consider Before Making Gifts to Grandchildren

Grandparents often are particularly generous to grandchildren as they see their family's legacy continuing on to a new generation. In many cases, grandparents feel they have ample resources and their children or grandchildren may be struggling financially. Assistance with summer camp fees, college tuition, wedding costs or the downpayment on a first home, can relieve pressure on the next generation and permit grandchildren to take advantage of opportunities that otherwise would be out of reach. Some grandparents also don't feel it's right that children and grandchildren should need to wait for an inheritance, when they have more than they need.

Helping out family members is to be encouraged, but can raise a number of legal issues involving taxes and eligibility for public benefits, as well as questions of fairness among family members. Here are six issues grandparents should consider before making gifts to family members:

- **Is it really a gift?** Does the grandparent expect anything in return, for example that the funds be repaid or that the money is an advance on the grandchild's eventual inheritance? In most cases, the answer is "no." But if it's "yes," this should be made clear, preferably in writing, whether in a letter that goes with the check or, in the case of a loan, a formal promissory note.
- **Is everyone being treated equally?** Not all grandchildren have the same financial needs, and grandparents don't feel equally close to all of their grandchildren. While it's the grandparent's money and she can do what she wants with it, if she's not treating all of her grandchildren equally, she might want to consider whether unequal generosity will create resentment within

the family. Many elder law clients say that what they do with their money during their lives is their business. They may help out some children and grandchildren more than others based on need, with the expectation that this will be kept private. But they treat all of their children equally in their estate plan.

- **Beware taxable gifts.** While this is academic for most people under today's tax law, since there's no gift tax for the first $5.25 million each of us gives away, any gift to an individual in excess of $14,000 per year must be reported on a gift tax return. Two grandparents together can give up to $28,000 per recipient per year with no reporting requirement. And there's no limit or reporting requirement for payments made directly to medical and educational institutions for health care expenses and tuition for others.
- **529 plans.** Many grandparents want to help pay higher education tuition for grandchildren, especially given the incredibly high cost of college and graduate school today. But not all grandchildren are the same age, making it difficult to make sure that they all receive the same grandparental assistance. Some grandchildren may still be in diapers while others are getting their doctorates. A great solution is to fund 529 accounts for each grandchild. These are special accounts that grow tax deferred, the income and growth never taxed as long as the funds are used for higher education expenses. Click here to read more about 529 accounts.
- **Don't be too generous.** Grandparents need to make sure that they keep enough money to pay for their own needs. While small gifts probably won't make any difference one way or another, too many large gifts can quickly deplete a lifetime of scrimping and saving. It won't do the family much good if a grandparent is just scraping by because he's done too much to support his children or grandchildren.
- **Beware the need for long-term care.** In terms of making

certain that they have kept enough of their own savings, grandparents need to consider the possibility of needing care, whether at home, in assisted living or in a nursing home, all of which can be quite expensive. In addition, those seniors who can't afford to pay for such care from their own funds need to be aware that any gift can make them ineligible for Medicaid benefits for the following five years. For details, click here.

There are even more issues to consider that may involve specific family situations. Some grandchildren shouldn't receive gifts because they will use them for drugs, or the gifts may undermine the parents' plans for the grandchild or their authority. In some instances, grandparents may want to consider "incentive" trusts, which provide that the funds will be distributed when grandchildren reach certain milestones, such as graduation from college or holding down a job for a period of time. Communication with the middle generation can be key to making certain that gifts achieve the best results for all concerned.

Talk to your attorney about devising the best plan for yourself and for your grandchildren.

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