



Making Gifts to Your Children

As a part of any good estate plan, we often think about making gifts to family during lifetime using the exclusions and exemptions of the gift tax laws. The most used exception is the \$13,000 per year per donee exclusion. This means that you can give up to \$13,000 worth of property to each member of your family (or anyone else for that matter) per year without incurring any gift taxes.

If you have minor children, gifts to a trust or custodial account for their benefit may be more appropriate (rather than outright gifts). If structured properly, these gifts can qualify for the gift tax annual exclusion and will be fully available for a child's educational needs. The simplest way of transferring assets for your children's benefit is to establish a custodial account under the Florida Uniform Transfers to Minors Act. In order to accomplish this, you would transfer money to a custodian to be held for your children's benefit. The biggest drawback to these accounts is that when a child reaches age 21, he or she would be able to withdraw all of the funds in the account to use as he or she wishes.

There are primarily two types of trusts to consider. The first type of trust is commonly referred to as 2503(c) trust, named after the Internal Revenue Code section which authorizes the trust. Similar to a custodial account, when a child reaches age 21, he or she would be able to withdraw all of the trust assets to use as he or she wishes. In order to protect the gifts made to your children from being expended at a young age, a second type of trust (called a "Crummey trust") is available. When money is transferred to the Crummey trust, your children would have the right to withdraw the money transferred. If your children do not withdraw the money, the assets will remain in trust for them for as long as the trust agreement provides.

In addition to annual exclusion gifts, there is an unlimited gift tax exclusion for payment by you of medical expenses and tuition costs of your beneficiaries. You must pay such amounts directly to the medical service provider or qualifying educational institution in order for such amounts to be excluded.

A word of caution, though, when making these types of gifts - do so only after consultation with your attorney and accountant. Gifts cannot be taken back, so if done incorrectly, you might have a large tax to pay!