

GIFT DUTY

With the stroke of a pen the Government abolished gift duty as from 1st October 2011. After that date any person can make gifts of any value without incurring a liability for gift duty. On the face of it this is good news for those who are in the process of a gifting programme and for estate planning purposes.

However there are some very important aspects of gifting to be taken into consideration and care and thought need to be given to all plans for the future. Some considerations to be taken into account are:-

As we get older it always seems to be a good idea to transfer our property to family. Under the new regime this can be completed much more easily but it is essential that property owners think about their future residential requirements before embarking on such a plan. If a family member becomes bankrupt or wants to dispose of the property, or their share of the property, difficulties could arise between various family members.

Older folk also need to consider what their requirements may be for the future. Should they allow for future surgical/medical needs, or perhaps overseas travel, a new car or other unforeseen happenings.

Gifts by a spouse to avoid the equal sharing provisions of the Property (Relationships) Act can be reversed by the Family Court. Similarly if a person with indebtedness makes a gift of property with the intention of defeating creditors, gifts in those circumstances may be clawed back into the bankrupt's estate.

Taxation issues may also arise, particularly where a company owes a debt, there may be income tax liability imposed on the entity receiving the gift.

For some time WINZ has had a policy of allowing an applicant for a rest home subsidy to make minor gifts in the five years prior to their application. It is understood that WINZ will vet all applicants' property transactions to ensure that they have not impoverished themselves in order to obtain a rest home subsidy.

Gifting is not a process to be entered, or pressured, into without due consideration and professional advice. Always bear in mind that if you give assets away you lose control of those assets and the receiver of any gift may deal with it in a way which does not suit you and may have a major impact on your future.

This article has been prepared by Bessie Paterson, a Partner with Ronald W Angland & Son, Solicitors, who may be contacted on Tel: 03 349-4708 or e-mail bessie@anglands.co.nz

Odocs/BessieartSep11gift duty