GIVING APPRECIATED REAL ESTATE TO YOUR FAMILY

By Dennis L. Voelkel, Esq.

If you're like most people, you don't like to think about planning your estate. But it's an important part of ensuring the financial security of your loved ones. One of the easiest and most common tools used in estate planning is a program of giving gifts. Gifts can reduce the size of your estate that is subject to tax while still passing on wealth. Gifts can also serve a function in your income tax planning by shifting income-producing property to others who are in a lower tax bracket. Not only will gifts enable you to remove assets from your estate, but gifts will also enable you to remove future appreciation of such assets from your estate.

While many gifts are subject to gift taxation, you can give away up to $12,000 (2008) per recipient per year free of gift tax. These gifts also do not reduce the amount that you can pass free of estate tax. There is a great deal of flexibility in the types of property that can be transferred. Qualifying gifts can be money, real estate, stocks or other business interests, or even a life insurance policy. The gift may also be made through a trust so that the actual distribution of the property can be made at a time when the recipient has the maturity to deal with the asset.

You can give up to $24,000 (2008) per recipient per year if you're married and your spouse consents to "split" your gifts. This is useful for spouses who do not own an equal amount of property. The spouse with less property can consent to gifts made by the wealthier spouse, thereby effectively doubling the amount that the wealthier spouse can give away tax free.

One important thing to remember when you make a gift of appreciated real estate is that the recipient must take your basis in the real estate. This means that if the recipient sells the real estate, any gain on the sale will be measured using what you paid for the real estate, not what the real estate was worth when he or she received it. In contrast, if real estate is transferred to another through your estate, the recipient can use the value of the real estate at that time in measuring any gain on the sale of the real estate. This increase in the tax basis is known as receiving a "stepped-up" basis. Consequently, choosing the asset to give is an important aspect of any gift-giving program.

If used properly, a program of gift-giving can benefit everyone involved. If you have any questions about the best way of using gifts as part of your overall financial plan, please contact us.

151 N. DELAWARE ST., SUITE 1900 INDIANAPOLIS, IN 46204-2505 **P:** 317.686.4773 **F:** 317.686.4777 WWW.INDIANA-ATTORNEYS.COM