Lifetime Gift, Loan or Theft?

When people give money/assets to others during their lifetime, this is known as making a lifetime gift. Gifting may occur for many reasons e.g. to mark family occasions such as weddings or birthdays, or to assist relatives or friends.

One benefit of making lifetime gifts, rather than leaving legacies in wills, is that the person making the gift (known as the donor) is able see the gift being used and enjoyed.

However, some lifetime 'gifts' may require further investigation. This might because the money was loaned rather than gifted (and it should be repaid to the donor), or the donor did not know about, or consent to, the payment being made e.g. where money is stolen by an attorney acting under a Lasting Power of Attorney.

Gifting and Vulnerable Adults

Our blog financial abuse of older or vulnerable adults explains more about cases where assets are stolen from vulnerable adults or Lasting Powers of Attorney are misused.

Although, many attorneys do a good job, financial abuse involving vulnerable adults is fairly common. For example, in June 2020 Karen Wakeling from Norfolk, was jailed for two years for stealing £80,000 from a vulnerable relative in order to fund her lifestyle, including holidays abroad. Ms Wakeling was investigated after Norfolk Social Services raised concerns about her victim and she pleaded guilty to 'fraud by abuse of position'.

There is concern that the COVID-19 pandemic may result in an increase in elder financial abuse cases, given the increased isolation and potential exploitation which some vulnerable adults mays have faced during lockdown.

Gifting and Estates

If a donor makes large gifts of money/assets during their lifetime, it can deplete the size of their future estate. After the donor's death, this may adversely affect the beneficiaries named in their will.

Executors and beneficiaries of an estate will therefore need to consider whether a lifetime gift was made with the donor's full acknowledge and consent. Also, whether any 'gifts' or made should be repaid to the estate.

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When can lifetime gifts be challenged?

You may be able to challenge a lifetime gift if:

- the donor did not have the mental capacity required to make the gift;
- the donor was coerced into making the gift;
- The donor's attorney (under an Enduring or Lasting Power of Attorney) made a gift on their behalf without obtaining approval of the Court of Protection; or
- The gift was made without the donor's knowledge or consent

Loans

It is not unusual for someone to loan money/assets to a relative or third party during their lifetime, on the basis that this loan is later repaid to them (or to their estate after their death).

However, in some case, if the person lending the money dies, the loan recipient may then try to suggest that the loan was either transferred into a gift, or that the loan was interest free, when that is not what the deceased intended.

Documenting the terms of any loans is therefore important, as this can help an estate to recover the loan in the event of the death of the person who made the loan.

What is deprivation of assets?

Sometimes, lifetime gifts are also made (or are encouraged to be made by others) to try to avoid:

- paying care fees;
- creditors being able to recover debts from estates; or
- a future claim being made against the donor's estate

This may be a deliberate deprivation of estate assets and it can cause problems for a donor or their estate.

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Anyone thinking of making substantial gifts, loans or transfers of assets should therefore consider documenting the transfer/gift/loan and also obtaining legal advice.

Our disputed wills & estates solicitors specialise in cases involving lifetime gifts, recovery of estate assets and fraud involving vulnerable adults. If you would like further information, please contact 01202 786161 or email online.enquiries@la-law.com.

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