

BUSINESS || INVESTING

Giving away assets while still alive

MONEY 401 | There are pros and cons, writes columnist **Ellen Roseman**

What's the best way for parents to pass along money to their children? Should they do it in a will or make financial gifts before death?

There are advantages to giving away part of your estate while you're alive, says Sandra Foster in *You Can't Take It with You: Common-Sense Estate Planning for Canadians*.

■ You can reduce probate taxes, levied on the value of the estate's assets distributed through a will. Ontario's probate tax is about 1.25 per cent (\$5 per \$1,000 on the first \$50,000 and \$15 per \$1,000 on the rest).

■ You can save on executor fees, also based on the size of your estate. Trust company executors always charge fees and family members occasionally do, depending on the work involved.

■ Your future income taxes may be lower, once you sell investments that

generate taxable income and capital gains.

■ Gifts made outside your will are private. They don't get the exposure and scrutiny that comes from a probated will.

■ You may take comfort from the feeling that you've put your affairs in order.

■ You can see your children appreciating your generosity (at least, you hope so) and enjoying previously unaffordable trips and other luxuries.

■ There may be fewer family squabbles after your death if you exercise some of your wishes ahead of time.

She urges parents not to bestow gifts on a favourite son or daughter. The other siblings can put two and two together and figure out what is going on.

"If there is a true need, people understand," Foster says. "But if it comes down to favouritism, that is another matter."

There are also disadvantages to giving away assets during your lifetime.

■ If you give away too much too soon, you may become financially dependent on family members or government so-

cial assistance.

■ If you own assets jointly with adult children, you no longer have exclusive control over them. They can be seized by creditors in a bankruptcy or split with an ex-spouse in a divorce settlement. You hope your children won't abuse their joint ownership, such as depleting a bank account without your consent.

■ If you hand-over cash to adult children, neither you nor they will have to pay tax on the gift. But if you give investments that have increased in value since you bought them, the Canada Revenue Agency may consider you have "sold" them at fair market value. You'll have to report a capital gain that could increase your income tax in the year you made the gift.

Financial planners often urge older clients to register their investments jointly with adult children. This keeps the assets out of the estate and reduces probate tax. In Ontario, you can save about \$7,500 in probate tax on a \$500,000 portfolio by changing the ownership.

But you have to read the documents carefully when you set up joint ownership. The question to ask: "Is there a right of survivorship or not?"

Some joint ownership arrangements are set up just for convenience — to avoid administrative hassles while the older person is still alive. When he or she dies, the asset becomes part of the estate and is transferred according to the instructions in the will.

If there's a right of survivorship, however, the asset stays out of the estate and is not governed by the will. All that is needed to transfer ownership is proper proof of death.

Sometimes it's not clear what a person intended to do when putting property into joint ownership. This can lead to legal fights after death — in fact, two such cases were heard in the Supreme Court of Canada last December.

"This is a real hot issue," says Ian Hull, a Toronto lawyer and estate mediator. "The courts continue to ask what is the real intention when setting up a joint account. Is it for tax planning or easy access to funds for an elderly parent's

needs? Where does the excess money go on death?"

When transferring ownership of assets to adult children, parents should document what they're doing and why.

"If you're giving joint ownership to one child who lives nearby, explain it to the others," says Barry Corbin, a lawyer who specializes in estate planning. "Get them all to sign an acknowledgment that they understand the arrangement."

Parents should say what their intentions are. Are they just trying to avoid probate tax? Do they want the money split equally among the adult children after their death?

The same advice applies to parents who make gifts of cash to adult children while alive. They should keep records of each transaction.

"I tell clients to document it. They can even write something on the cheque," Hull says.

If adult children fight it out in court later, the one who receives the cash will have to prove it's a gift. There's an extra burden under the law to show there was no arm-twisting.

■ Next week: How to prevent disputes about family-owned real estate.

Ellen Roseman can be reached by writing Business c/o Toronto Star, 1 Yonge St., Toronto M5E 1E6; by phone at 416-945-8687; by fax at 416-865-3630; or at eroseman@thestar.ca.