Chapter VII

Using Gifts in Estate Planning

A. Overview and Purpose

To many people, giving property away during their lifetime accomplishes several important goals. In this chapter we will examine these goals and their impact on estate planning objectives. Some of the items discussed in this chapter will apply the ideas and concepts discussed in Chapter V.

In the opening discussion we will examine legal issues that surround the concept of a gift. Understanding this concept will enable us to turn our attention to the question of their use in estate planning and the factors that favor use of gifts in particular situations. A popular form of gift is that to a charity. We will examine the nature of such transactions by describing the common types of charitable gifts used today. With that background we will review the income, inheritance, and estate tax issues that should be understood before turning to the use of gifts in estate plans.

B. Lesson Objectives

When you have successfully completed this chapter you will be able to accomplish the following objectives:

1. Discuss the legal requirements of lifetime gifts.
2. Discuss the role of lifetime gifts in solving estate planning problems and describe the situations to which a gifting program can be applied.
3. Describe and compare the various types of charitable gifts commonly used in estate planning today.
4. Discuss the income, estate, and gift tax issues to consider before making lifetime gifts part of an estate plan.

C. What is a Gift?

In the legal sense, a gift is a transfer of property to another person without any consideration or benefit given in return for the property. Gifts can be compared to sales and loans. A gift is distinguished from a sale in which parties to the sale exchange something of value with each other. A loan, on the other hand, has a clear expression of an intent to either return the property or repay the funds advanced.

Gifts can be made to total strangers, close family members, or institutions whose function is to promote the welfare of mankind and the community. A gift can be either total or partial. A gift can be either a gift of a present interest or a gift of a future interest.

A total or complete gift is a transfer in which the recipient does not give any consideration to the former owner of the property who transfers the property. A partial gift is one in which the recipient of the property transfers some consideration to the former owner, but the value of the consideration is less than the value of the property received by the recipient. A gift of a present interest is a gift that the recipient is able to enjoy now, while a gift of a future interest is one in which enjoyment of the gift property is delayed until some future time or situation.

> *Example: If a parent lends money to a child and charges the child a small amount of interest on the loaned funds, the parent has made a gift to the child of the difference between the market rate of interest that lenders normally charge on loans of this type and the rate of interest the child agrees to pay the parent.*
>
> *Likewise, if someone decides to transfer valuable property to another person or entity and the documents that evidence the transfer refer to the fact that the recipient purchased the property for one dollar, the seller of the property makes a gift of the property by transferring it for less than its fair market value.*

If a partial gift is one in which the value of the item given away is greater than the value of what is given in return for the item, how can I distinguish partial gifts from other transactions in which property is transferred but the value of what is given does not equal the value of what is received? Not all situations in which someone transfers something for less than it is worth are considered to be gifts, so it is important to distinguish these transactions. In such cases, three requirements distinguish gift transfers from other transfers.

D. Distinguishing Gift from Other Transfers

1. Intent to Make a Gift

The first requirement is that the owner who transfers the property intends to make a gift when the transfer is made. Since the intent to act in a certain way is important, evidence of a person's intent becomes important. Evidence of such intent may be found in a person's own written or spoken words or by evaluating a variety of typical situations that the person has behaved in the past. The importance of establishing a person's intent is seen in a variety of situations, such as where a person gives away something of great value and receives something of lesser value in return. In general, this situation would not be considered as a gift because the intent to make the gift is lacking. In some situations, a legal presumption arises that a transfer is not a gift.

> *Example: If a person creates a joint ownership interest of a bank account in which only his or her funds are deposited, the Uniform Probate Code law presumes that the joint owners intend for each owner to have access during their lifetimes to only that portion of the account which represents their contribution to the account. If only one person contributed funds, then only that person would be entitled to withdraw funds from the account while both joint owners are alive. During lifetime, it is presumed that the joint owner who contributes little or nothing to the account is to have access to only that which he or she contributed. At the death of*

> *one of the joint owners, however, the right of survivorship feature of this form of joint ownership transfers ownership of the remaining balance of the account to the surviving joint owners.*

To overcome this presumption and create a joint account in which each owner is entitled to access to the full fractional share of each owner, even if no contributions were made, the owner must establish the intent to do so by clear and convincing evidence. An owner who wants to overcome the presumption is able to do so, but the terms on which it is done must be clear and without doubt.

In addition to state property law presumptions regarding whether a gift is made, the federal gift tax law also impacts on specific transactions. For example, when a joint ownership interest is created in a joint bank account, for federal gift tax purposes a gift does not occur until money is withdrawn from the account by the recipient of the gift. If the recipient of the gift contributed some of the funds in the account, a gift does not occur until the recipient withdraws more money from the account than he or she had contributed to it. United States savings bonds are considered as gifts when the bond is surrendered by the recipient for his or her own benefit. Delivering a check to another person is not treated as a gift until the check is paid or transferred for value to someone else. A person who holds a power of appointment over property holds the power to determine who will own or enjoy the property over which the power operates. Powers of appointment are created by someone other than the person who holds the power. The exercise or release of a power of appointment is treated as a gift if the exercise or release was made without adequate consideration.

2. Transfer of Dominion and Control

The second requirement of a gift is that the owner of the property must give up full dominion, ownership, and control of the item to the person who receives it. A person who is unwilling to give up control of an item and retains some control over or interest in property does not make a gift of the property. Without giving up all interest in or control over the item given away, a completed transfer is not made. In some situations a person may give up ownership and control of an item, but still retain possession of it after the transfer. This may indicate several things, such as the owner wants to retain the right to change his or her mind about making the gift, or the gift is intended to take effect only after the owner's death. In the first instance, the right to revoke the gift may indicate that a complete gift has not occurred. In the second instance, a gift that is delayed until after an owner's death is a gift of a smaller interest in property than a gift of a full interest. This smaller interest that follows after an owner's death is referred to as a remainder interest.

3. Acceptance of the Gift

The third requirement is that the recipient of the gift actually receives and accepts it. As in the case of the first requirement, no one can be forced to accept a gift if it is not their intention to do so.

In addition to these requirements, several other factors influence the determination of whether a gift is made. If property is transferred in return for something that cannot be valued in terms of money or money's worth, such as love and affection, or a promise of marriage, the transfer is viewed as a gift. Waiving or surrendering marital rights to property is also treated as a gift, except where a married couple actually obtains a divorce and settles their property rights by written agreement.

Gifts can be either directly or indirectly made. Direct gifts are gifts made to the recipient without first passing through another entity or person. Indirect gifts, such as gifts in trust, ultimately pass to the intended recipient, but only after passing through the trustee's legal ownership form.

E. How Are Lifetime Gifts Used in Estate Planning?

For estate planning purposes, lifetime gifts are used to shift ownership of assets out of the hands of a person who does not wish to be the owner of the property and into the hands of another who can benefit from ownership.

By doing so, the former property owner reduces the size of the assets under his or her ownership and control. This in turn reduces the potential size of the federal gross estate for federal estate tax purposes and the estate subject to inheritance tax. If the transferred property generates income or enjoys substantial appreciation in the future, the income and future appreciation are also credited to the recipient, rather than the former owner. To those property owners who face the possibility of having estate and inheritance taxes imposed on the transfer of property after their death, lowering the value of their total assets has a direct impact by lowering the taxes they pay.

When the exclusion equivalent unified credit applicable to federal estate taxes was much lower than it is today, property owners considered gifting as a means of lowering taxes. The dramatic increase in the equivalent exemption to the unified credit described in Chapter V has lowered the importance of this strategy for many property owners.

> *Example: A person who owns property valued at $1,500,000 develops an estate plan that calls for lifetime gifts of $10,000 to each of her five children and grandchildren in 2001 and continuing for the next five years. By completing this gift-giving program, the owner reduces the size of her estate by $250,000.*
>
> *If the owner had not made these gifts, the federal estate tax on the owner's gross estate of $1,500,000, less the unified credit of $192,800, would be $363,000 ($448,300 plus 43% of $250,00 = $555,800 - 192,800 = $363,000). After having made the gift, the federal estate tax on the owner's gross estate of $1,250,000, less the unified credit of $192,800, would be $255,500 ($448,300 - 192,800 = $255,500). By making the gifts, the owner saves $107,500 in estate taxes on the property that is given away. If the property given away increases in value, the size of the savings could be greater.*

In the case of married couples, transferring property ownership from joint ownership to sole ownership is an important tool in the estate plan intended to maximize use of the unified credit in the estate of each spouse. By creating a separately owned estate for each spouse, it is more likely that at each spouse's death, that spouse's own equivalent exemption will be used to shelter the transfer of property from federal estate tax. Having each spouse own separate assets and provide for the transfer of it in a way that is not subject to the marital deduction at the surviving spouse's death allows the unified credit to be applied and the assets to pass to other heirs free of federal estate tax. Transfers between spouses are subject to an unlimited marital deduction for federal gift tax purposes. This enables the couple to rearrange ownership of assets to save federal estate taxes at the death of the spouse and with no lifetime gift tax consequence. If property is jointly owned between spouses the joint ownership interest can be severed into two multiple owner or tenant in common interests that enable each spouse to claim an undivided one-half interest in property.

In the case of closely held business assets, gifts of shares of stock or partnership interests enable majority owners to shift control of a business to junior owners who are building their ownership share. The principal considerations here are the ease with which the transfer can be made and the estate tax consequence of having made the transfer. Businesses owned in corporate or partnership form also have the advantage of being transferred more easily than those owned as proprietorships. Transfer of proprietorship assets is generally accomplished on an asset by asset basis or as a "going concern" where all business assets are sold in a single sale. Transferring shares of stock that represent ownership of all business assets is significantly easier to accomplish. In contrast to the ease of transfer of stock or partnership shares, valuation of small business stock and partnership transfers generally requires valuation of the business as a whole in order to determine the relative value of stock shares or partnership interests. Proprietorship assets, in contrast, are valued individually and some may be valued quite easily, such as vehicles, equipment, or livestock.

F. Factors Involved in Gift Giving Programs

In evaluating a gifting program, property owners should consider the uncertainty of tomorrow's financial. Perhaps the most significant uncertainty confronting us today is the issue of long-term care. Will this be something an individual or family will confront? If it is, what options for planning are available and what factors influence a person's choice from among the various options? Saving death taxes may seem like a practical way to ensure the transfer of a large portion of the estate to intended heirs, but it also influences the property owner's current financial picture. At what point does saving future transfer taxes interfere with current financial needs and requirements?

Property owners who decide to embark on a gift-giving program have many things to consider. In deciding which assets to transfer, numerous other considerations enter into the deliberation. If assets such as farmland, forest land, or real estate used in a closely held business are involved in an estate, these assets may be able to take advantage of special valuation or installment payment opportunities for federal estate tax purposes. To the extent that these opportunities provide significant tax saving to the estate, retaining the real estate and passing it after death may provide more desirable benefits to a property owner than giving it away during lifetime. Special use valuation and installment payment provisions require the business assets be a specified percentage of the gross estate. Transfers that affect these percentages must be coordinated to avoid loss of these opportunities through failure to meet the required percentage.

Assets that yield significant income to a high income tax bracket taxpayer may be ideal candidates for gifts. Income tax benefit comes from the lower level of taxable income and estate tax benefit derives from the smaller gross estate. Transfer of assets that are expected to appreciate in value transfers the property, as well as its future appreciation. Gifts to qualifying charities can yield an income tax benefit through provisions for an income tax charitable deduction as well as estate tax benefits through a charitable deduction for estate and inheritance tax purposes.

When an owner gives property to another, the owner transfers the owner's income tax basis to the recipient. In the case of a high-value, but low-income-tax-basis item, the low basis may affect the recipient's future plans to sell the property by imposing significant tax on the gain from the sale. Until January 1, 2010, passing assets to heirs through an estate to gain a step-up in basis of the property may be beneficial to the recipient.

Gifts to children under the age of majority, which is 18 years in most states, present troublesome gift-giving considerations. Making the transfer will benefit the adult owner, but the minor child who receives the property may be unable to legally control the property or may lack the maturity to deal with it responsibly. Coupling these concerns with the gift tax annual exclusion requirement of transferring a present interest in the gifted property to the child further complicates the problem.

Gifts to children qualify as present interest gifts if the property and the income it generates may be spent by or for the benefit of the children before their 21st birthday. Whatever balance remains is distributed to the children at that birthday. If a child dies before reaching age 21, the balance must be payable to the estate of the child or be appointed by the child under a power of appointment to someone else. Gifts of property passing to a trustee for the benefit of the minor beneficiary must meet these requirements in order to qualify as a present interest.

Gifts to minor children of a present interest can also be made under the Uniform Transfers to Minor's Act (UTMA). Under this act, the donor transfers the property to a custodian who is designated to hold the property for the minor child under the provisions of the Uniform Transfers to Minor's Act. By making this transfer and designating the custodian, the property is considered to be the minor child's. The custodian's role in this transfer is to facilitate transactions involving the property until the child reaches the age of 21 and to pay over to the minor child the balance of the custodian account when the child reaches age 21. If a child's parent transfers property under the UTMA, and designates himself or herself as the custodian for the minor child, several conflicting issues arise. For purposes of federal estate taxes, the role of a parent as custodian for his or her own child is viewed as the parent retaining ownership and control of the property such that the transferred property is included in the federal gross estate of the parent who dies before the property is transferred to the child at the child's 21st birthday. The UTMA clearly indicates that transfer to a custodian under the act results in an effective transfer to the child. Reconciling this dispute and the accompanying confusion it can create may best be accomplished by naming an unrelated party as custodian for the child.

Another method of designating ownership of bank accounts for minor children is a tentative trust. This type of ownership lists a trustee as owner of the bank account and adds the designation "in trust for" a minor child. In this situation, unless there is clear and convincing evidence of a contrary intention, this account is considered to be the property of the trustee during the trustee's lifetime. If the parent of the child is the trustee, the parent is considered to be the owner of the property during lifetime. As such, tentative trusts are not considered gifts of a present interest of the money in the account. After the trustee's death, the balance in the trust account is the property of the beneficiary described in the account title. If more than one beneficiary is named, there is no right of survivorship between the beneficiaries, unless the account specifies this relationship.

Gifts to and between spouses are frequent examples of estate planning transfers motivated by the desire to save taxes through use of the unlimited marital deduction and the unified credit exemption equivalent. This technique is effective in creating the separately owned asset inventory that can pass free of gift taxes between spouses and free of estate taxes to heirs. If spouses maintain their assets in joint ownership, the death of the first spouse triggers application of the unlimited marital deduction for estate tax purposes, thereby jeopardizing use of the unified credit exemption equivalent by the first spouse's estate. In the calculation of federal estate taxes, deductions are taken before the taxable estate is determined. Therefore, maximizing the marital deduction results in a larger deduction and little or no taxable estate and little or no tax to which the unified credit can be applied. Since an individual loses the credit that is not used, the opportunity to pass property free of federal estate taxes can be lost.

G. Gifts to Charities and Other Institutions

In the context of estate planning, transfers to charities, whether during lifetime or at death, are treated in special ways. The tax considerations of such gifts involve income, estate, gift, and inheritance taxes. If the lifetime gift of property is eligible for an income tax deduction as a charitable contribution, the property owner may be able to achieve a savings at three levels. Death transfer taxes will be reduced because the size of this owner's estate will be reduced, no gift tax will be imposed because of the gift tax charitable deduction for gifts to charities, and income taxes will be reduced as a result of the income tax charitable deduction.

What type of gifts qualify for a charitable deduction? Gifts made in a calendar year to or for the use of the federal government or a state or local government body for exclusively public purposes are entitled to a charitable deduction. Certain Indian tribal governments are treated as states and, as such, gifts to these tribal governments qualify as deductible charitable contributions. Transfers to a corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, organizations that foster amateur sports competition, and organizations for the prevention of cruelty to children or animals are likewise entitled to a charitable deduction. These organizations qualify for a deduction as long as no part of their net earnings benefit a private individual and no substantial activity is undertaken to carry on lobbying efforts or participation in a political campaign. Transfers to other organizations such as fraternal societies, orders, or lodges that use property exclusively for religious, charitable, scientific, literary, or educational purposes also qualify for a deduction as long as no part of the net earnings of the organization benefit private individuals. If a transfer to a charitable organization is contingent on a particular act or occurrence, a deduction is allowed only if it is virtually certain that the transfer will become effective and the contingency can be ignored.

Gifts to charities can be of several different types, such as direct gifts, indirect gifts made to a trust, gifts of a full interest, and gifts of a partial interest. Direct gifts to charity of a full interest in property are measured by the value of the property at the time the gift is made. In this situation, the owner transfers property directly to the charity which takes over ownership and control of the item from that point forward. Direct gifts to charities of a partial interest in property may be either gifts of a fractional ownership share in the property, a remainder interest in real property, such as a home or land transferred in trust or a gift of a qualified conservation easement to a qualified organization for conservation purposes. Qualified conservation easements are discussed in more detail in Chapter VIII.

A gift of a remainder interest in property is known as a "charitable remainder trust". Once the decision is made to use a charitable remainder trust, the trust can take one of three forms: A remainder **unitrust**, an **annuity trust,** or a **pooled income fund**.

A **unitrust** provides for an annual payout from the trust of an amount equal to a fixed percentage, which must be at least 5%, of the net fair market value of the trust assets as valued each year. These annual payments are made to one or more persons who are living at the time the trust is created. At the death of the beneficiaries, or at the end of a term of up to 20 years, the remainder interest is held for the benefit of the designated charity or paid to it. A charitable remainder **annuity trust** is a trust from which a specified amount is paid at least annually to one or more persons who were living at the time the trust was created. The amount paid to the beneficiaries must be at least 5% of the initial fair market value of the property placed in trust. At the death of the last income beneficiary, or at the end of a fixed term of up to 20 years, the remainder interest must be paid for the benefit of a qualified charitable organization or paid to it. A **pooled income fund** is a trust maintained by a charity to which donors transfer property by contributing the remainder interest in the property to the charity. In such funds donors can keep an income interest for life or create an income interest in the property for the benefit of another beneficiary who is living at the time the trust is created.

H. Income, Inheritance, Gift and Estate Tax Issues of Gift Giving

Several chapters in this book describe tax issues involved with estate planning. In this section we will review the tax issues that are most directly involved with gift giving programs that are part of an estate plan. The following list of questions will review and highlight the issues:

1. Income Tax Issues

- Is the recipient of the gift a qualifying organization that permits the donor of the property to receive an income tax charitable deduction for the gift?
- What is the value of the gift for income tax deduction purposes?
- What is the income tax basis of the property in the hands of the former owner? What is its purchase price? What improvements or other adjustments to basis were made during the donor's period of ownership?
- What will the recipient of the property do with the gift after receiving it?
- Is the donor of the property eligible to take advantage of the one time federal income tax exclusion of up to $250,000 ($500,000 if a joint taxpayer) of capital gain from the sale of a personal residence?

2. Estate Tax Issues

- Within three years of the decedent's death did the decedent transfer a life insurance policy, transfer property in which the decedent retained a lifetime interest, make a transfer taking effect at death, or make a transfer in which the decedent retained a right to revoke it?

3. Gift Tax Issues

- If a gift is made, will the gift qualify as a gift of a present interest?
- If a gift is made, will the value of the gift exceed the amount of the gift tax annual exclusion? If the donor is married, is the donor's spouse willing to "split" the gift?
- Will the donor make a gift of tuition paid directly to an educational institution on behalf of a student at the institution?
- Will the donor make a gift in the form of payment for medical care and services or medical insurance provided to another person?
- Will the donor make a gift to his or her spouse that will qualify for the gift tax marital deduction?
- Will the donor make a gift to a qualified charity that will qualify for the gift tax charitable deduction?

4. Generation Skipping Transfer Tax Issues

- If a gift is made, is the recipient of the gift two or more generations younger than the donor, or is the recipient more than 37 1/2 years younger than the donor? If the gift is made from a grandparent to a grandchild, did the parent of the grandchild die before the gift is made?

- If a gift is made, will the gift qualify for the gift tax annual exclusion, or the special exclusions for tuition paid directly to an educational institution, or for the payment of medical care or service expenses?

- If a gift is made, to which generation skipping transfer tax can apply; does the donor have all or part of his or her generation skipping transfer tax exemption available to apply to the gift?

I. Student Exercises

Multiple-Choice Questions

Please read the questions carefully, then select one of the four choices following the question that correctly answers the question asked.

1. Which of the following statements does not describe one of the requirements of a valid gift for property law purposes?
   a. The person who receives the property is willing to receive it.
   b. The person who gives the property intends to transfer the property without receiving something of equal value in return.
   c. The property given away is less than $11,000 in value.
   d. The person giving away property surrenders dominion and control over the property to recipient.

2. Jeffrey wants to transfer his land to his son Jerrold, but he is not ready to turn it over to him completely. Therefore, Jeffrey prepared a deed to the farm that transfers the farm to Jerrold but retains the right to live on the property for the balance of his life. Jeffrey signed the deed, had his signature notarized, and put it in his desk drawer without ever giving it to Jerrold or recording it with the Recorder of Deeds.

   Based on these facts and our discussions of gifts, which of the following statements about the legal nature of Jeffrey's transfer to Jerrold is correct?
   a. Jeffrey's deed is a valid transfer since he signed the deed.
   b. Jeffrey's deed is not a valid transfer since the deed was never delivered to Jerrold.
   c. Jeffrey's deed reserved a remainder interest in the farm for the balance of Jeffrey's life.
   d. Jeffrey's attempt to retain an interest in the property after giving it to Jerrold is ineffective and Jerrold can ignore it.

3. George wants to share some of his good fortune with his neighbors in Happy Valley. After talking with the local high school officials, George decided to sponsor a high school student who wants to attend college, but doesn't have the money to do so. George agreed to pay the tuition for the student to attend George's alma mater. Tuition for undergraduate students at that University is $22,000 per year.

   Based on these facts and our discussion of gifts for federal gift tax purposes, which of the following statements about the federal gift tax is correct?
   a. Each tuition payment that George makes on behalf of the student is a taxable gift on which George is responsible to pay federal gift tax.
   b. Since the gift is less than $30,000 in any single year, the gift meets the gift tax annual exclusion.
   c. If George pays the tuition directly to the university on behalf of the student, George's payment will be exempt from federal gift tax.
   d. If George dies within three years of making any of these tuition payments, the payments made within that time will be taxable gifts.

4. Which of the following factors is <u>NOT</u> a reason to make gifts of property to qualified charities?
   a. Reduce the potential size of the donor's federal gross estate.
   b. Obtain an income tax charitable deduction.
   c. Increase income from private investments.
   d. Transfer property without having to pay federal gift tax.

5. When a person gives property away to another person, what is the recipient's income tax basis in the property?
   a. The recipient's basis is its fair market value at the time of the gift.
   b. The recipient's basis is equal to whatever consideration the recipient gave to receive the property.
   c. The recipient's basis in the property is zero.
   d. The recipient's basis in the property is the same as the basis of the donor of the property.

Short Essay Questions

Please read each question carefully and then respond to what is asked for at the end of the question. Your answer need not be long or involved, but it should be as clear and concise as possible. If you want to refer to important facts in your response, please feel free to do so.

6. Nicholas and Alexandra want to reduce the potential size of their federal gross estates by making gifts of property during their lifetime. The people they want to benefit by their gifts include their children, their families, and several charities, including a church and a university hospital.

Nicholas and Alexandra own two parcels of forest land. One was purchased in 1950 for $50,000 and is now worth $500,000. The second was inherited from Alexandra's father 30 years ago. Real estate development is surrounding the second farm and its value is increasing rapidly. Some people say it is worth $4,000,000.

Among their other assets, Nicholas and Alexandra have several joint bank accounts, certificates of deposit, and they own stock in several companies that are traded on the national stock exchanges.

Several years ago Nicholas and Alexandra formed a corporation when the oldest of their children decided to come back to help manage the forest land. Since then the child has been an excellent contributor to the business and she wants to stay and eventually manage the business on her own some day. Two other children are in the family, but neither child is interested in the business.

Based on our discussion of the factors that influence gift-giving decisions, evaluate Nicholas and Alexandra's situation and suggest which assets they might give to their children, to the church, or to the university hospital.

7. Geraldine decided to open a new bank account after she received the proceeds from the sale of her farm. Because she is elderly, she decided to name her daughter joint owner with the right of survivorship, even though her daughter had not contributed any funds to the account. Geraldine chose her daughter to be joint owner because her other two sons live out of the area and Geraldine has a better relationship with her daughter than with her sons.

   When the account was opened, Geraldine's daughter signed the bank signature card, but Geraldine maintained the account cards needed to withdraw money. Based on our discussions of gifts, what right does Geraldine's daughter have to withdraw funds from the account during her lifetime and after Geraldine's death?

8. Thomas, an elderly widower, is in failing health. After his wife Martha's sudden death he became lonely and fell ill. Knowing that his health was failing, Thomas asked his oldest son, Ken, to help him distribute some of his property. Thomas asked Ken to draw four checks, each in the amount of $25,000, from his checking account and pay them to Ken and Thomas's other children. In addition, Thomas asked Ken to issue a check in the amount of $20,000 to Thomas's neighbors, the Mullin family. Thomas wants to help the family send their oldest son to college next year. Thomas's final instruction was to issue a check in the amount of $15,000 and pay it to Martha's favorite charity.

   Ken carried out all of Thomas's instructions and delivered the checks. Four months later, after a bout with pneumonia, Thomas died in his sleep.

   Based on our discussions of the tax implications of gift giving, what tax issues do you recognize in this situation?