



# PASSING *it* ON

What you need to know about transferring wealth through gifts and loans, especially as it pertains to housing.

By: Nicole Woodward

How do you transfer money to your kids now while balancing family dynamics, protecting family assets, and ensuring alignment with your estate plan? Nicole Woodward, Partner and National Practice Group Leader of Private Client Services at Miller Thomson, has the answers. As one of Canada's leading legal minds in private wealth law, Woodward has unique insight into the realities of transferring wealth. In a workshop hosted by Burgundy Vice President and Investment Counsellor Lauren Davis Landau at the Minerva Summit, Woodward shared practical, real-world scenarios to help us better understand the options for providing financial assistance to loved ones, including through gifts and loans, while being mindful of asset-protection, tax, and other consequences.

These days, everything seems so much more expensive, whether it's housing, education, or simply the cost of day-to-day living. The housing affordability crisis in Canada—particularly in Toronto and Vancouver—has made it increasingly difficult for younger people to purchase their first home. This is changing the way families are thinking about transferring wealth, and in particular in relation to the purchase of a home.

Ahead is a review of some common considerations that arise when providing financial assistance to family members, including asset protection, matrimonial protection, cross-border tax implications, and protection of vulnerable persons.

To illustrate, we will follow Joan and her family through a series of scenarios. Joan is 80 years old and widowed. She has three children: Charles, Christina, and Chelsea. Charles has two adult children, Christina has one minor child, and Chelsea has no children. Each of Joan's children face a different circumstance, which will help us explore the various strategies and considerations for transferring wealth to the next generation.

### **Helping a Child with a Home Purchase: To Gift or Not to Gift?**

Let's start with Christina, 45, and her husband, Brad. They have been renting for years and have found a home they would like to buy for a purchase price of \$2 million. Christina approaches Joan and asks whether Joan would be willing to help by contributing \$1 million towards the

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purchase of the property.

Joan has three main options for helping Christina and Brad: an outright gift, a loan, or some kind of co-ownership arrangement.

#### **A. The Outright Gift**

If Joan decides to make an outright gift of \$1 million for the purchase of the property, she could first consider to whom the gift should be made. We recommend that when gifting, Joan should “keep it in the family” by making the gift to Christina alone. If the gift is made to both Christina

and Brad, then Brad will be entitled to half of it in the event of a marriage breakdown.

What are the advantages of an outright gift? For many parents, there is an emotional appeal to “giving with a warm hand”: helping their children now when they are able to witness the tangible difference the assistance makes in the lives of their loved ones. From a practical standpoint, the gift makes the home more affordable for Christina and Brad, and helps them start building their own wealth. Further, it decreases the portion of Joan's probatable estate, which, in Ontario, represents an estate administration tax savings of about \$15,000. Tax savings should not be the driving consideration, but they should be on the list of considerations.

But outright gifts come with risks. For example, even if the gift is made to Christina alone, if Christina puts the money into the matrimonial home (often referred to as “the most sacred of possessions”) it will likely be divisible between Christina and Brad in the event of a marriage breakdown, as already mentioned.

Could a prenuptial agreement help protect the gift? Potentially, but only if structured correctly. If the gift is an outright gift to both Christina and Brad, a prenup will not help because Brad could argue that Joan was simply being generous: She is permitted to give a gift to Christina and Brad if she wants to. If Joan insists on making the gift, the best protection is a prenup that specifically addresses how such gifts are to be treated in the event of a marriage breakdown, and an



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acknowledgment by everyone involved that this gift fits within gifts contemplated in the prenup as exempt from net family property.

Beyond the matrimonial risk, there are other matters that Joan should consider, such as whether the gift may cause dissension among her children. Presumably, Charles and Chelsea will eventually learn that Christina received \$1 million, and the inequity may provoke feelings of resentment towards Christina and/or Joan. Whether Joan can equalize among her children depends on her financial situation. With \$50 million of assets, equalization is straightforward with a conversation and some estate planning adjustments; but if Joan has \$3 million of assets, a gift of one-third of her gross worth to one child creates an imbalance that may be impossible to resolve.

Another consideration is whether the gift creates an expectation by Christina for ongoing assistance, putting Joan in a position where she is unable to say “no,” creating a strain on the relationship. We have seen instances where once the tap is turned on, ongoing requests for assistance can arise to fund a new car, home renovations, purchase of a cottage, the grandchildren’s education, the list goes on. What was intended as a one-time gift has become an ongoing stream of support, and, worse, risks creating a dependency in adult children.

The most important consideration is, of course, whether Joan has sufficient wealth to support herself to the end of her days. Private health care is expensive. Some of our clients require in excess of \$500,000 annually for 24-hour private care. Even part-time home care or quality retirement living can exceed \$100,000 per year. If Joan needs this level of support one day, she could run out of money.

Finally, there are potential estate complications. Let’s say Joan makes the gift and then does nothing else—doesn’t update her will, doesn’t document anything, doesn’t communicate her intentions with her other children. Upon Joan’s passing, Charles and Chelsea might take the position that the assistance was a loan rather than a gift. While Christina may ultimately be able to prove it was a gift, the damage is done. A dissension among siblings has been created at exactly the time when families should be coming together.

### **B. The Loan Alternative**

Instead of a gift, Joan could structure the \$1 million as a loan. Unlike a gift—which should only go to Christina—we recommend that a loan be made to both Christina and Brad.

The mechanics are straightforward. The loan may be documented by a promissory note that includes the loan amount, the repayment terms and the rate of interest. The note is then registered as a mortgage on title to the property. Registration is critical for Joan’s loan to take priority over other future creditors who may later register liens and encumbrances on the property. While we appreciate that if Christina and Brad get a mortgage from a financial institution for the other half of the purchase funds, that financial institution will insist on their mortgage taking priority over Joan’s mortgage, which

becomes a second mortgage. Nevertheless, we still recommend that Joan register her second mortgage on title to the property to preserve priority over other future creditors or encumbrances. It also prevents Christina and Brad from (among other things) obtaining a line of credit on the property which would take priority over Joan's loan and could result in the property being leveraged for more than it's worth.

The loan structure also provides for protection in the event of a marriage breakdown. If Christina and Brad separate, Joan can call in the loan and it becomes a debt jointly owed by both Christina and Brad. Once the loan is repaid and Christina's divorce has been finalized, Joan may decide to loan or gift funds to Christina to help

The loan needs to be a *bona fide* loan. A no-interest loan upon which no payment is ever made is vulnerable to attack. For example, if Christina and Brad separate, Brad could argue, "We were never meant to repay the \$1 million. There was no document, no interest, and no payments—clearly no intention to treat this as debt." His argument may succeed in having the loan set aside. We recommend the loan be documented and signed by the parties, and that it include a certain rate of interest, however minimal (which Joan may waive from time to time). Also, importantly, Christina and Brad should make payments on the loan—even small ones—from time to time. A couple of hundred dollars a few times a year serves a critical purpose of

to another city for a job opportunity, and due to a decrease in property values, they receive only \$1.5 million from the sale. The financial institution gets the first \$1 million, and Joan is only able to recover half of the \$1 million loan, losing half of her money due to simple market dynamics.

### C. Co-Ownership

The third option is a co-ownership arrangement. Joan could own the property jointly with Christina and Brad. In my experience, only in the rarest of cases does this actually work. It is complicated, expensive, and can create more problems than it solves.

First, let's consider the tax implications. Notwithstanding how the title to the prop-

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her purchase a new home.

The loan also preserves fairness among Joan's three children: If Joan loans \$1 million to Christina and then passes away, that \$1 million is a debt owed by Christina and Brad to Joan's estate. Christina and Brad would repay the loan, and then Joan's estate would be divided equally among her three children. The same result is achieved if Joan updates her will to include a hotchpot clause providing that any loans made to children are to come out of that child's share of the estate. This enables Joan to provide different amounts to her children over time depending on their individual needs, with the comfort of knowing that everything will be equalized at the end (assuming that Joan has sufficient assets in her estate to do so).

reinforcing the loan because it constitutes an acknowledgment of an expectation of repayment by the debtors and creditor at various points in time.

Like the gift, the loan also has a downside. If Joan opts for the loan, she becomes Christina's and Brad's creditor, and that might change the dynamic at Sunday dinner. Also, what if Christina and Brad cannot make payments? If the loan amount constitutes a large portion of Joan's wealth, then Christina's and Brad's inability to repay now affects her own financial security. Is Joan going to foreclose on the property where her grandchildren live? Highly unlikely.

There are also factors out of everyone's control, such as the ebb and flow of the real estate market. Suppose Christina and Brad need to sell the house and relocate

erty is registered, if Joan owns half of the property and Christina and Brad own the other half and live in it, then upon disposition of the property, Christina and Brad will enjoy the principal residence exemption on their share, Joan will be required to pay tax on any gain on her share. We have seen situations where the parties register the property in the name of Christina and Brad so that they can claim the principal residence exemption on the entire value of the home upon disposition. We do not recommend this. Joan cannot legally claim that she had an interest in the property for ownership purposes but not for tax purposes.

Also, if Joan is not registered on title and there is no loan documentation, then there is no evidence that Joan has a financial interest in the property. Unless Christina

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and Brad agree otherwise, Joan's estate may be deprived of her share in the property, and, assuming the estate is divided equally among Joan's children, this would result in an inequity among her three children.

Co-ownership arrangements may also involve disagreements about finances. What happens if one party is unable to pay their share of the property taxes? What if the parties cannot agree on how much insurance to carry, or whether to renovate, or when to sell? What happens if all parties live in the property and the relationship breaks down?

While some issues may be addressed in a co-ownership agreement, we find that parties are reluctant to enforce them. For example, is Joan going to insist that Christina and Brad pay half of the property taxes if one of them has lost their job? How does Joan exercise her right to be bought out if Christina cannot afford to do so?

### **Making the Decision**

Each family and situation is different, and solutions are therefore bespoke. In my experience, most parents either proceed by way of loan with proper documentation, or they make a gift and then equalize among other children.

However the family wishes to proceed, we recommend they consider holding a family meeting. In some cases, the best thing you can do is to bring everyone to the table, be transparent about the help being provided, and manage expectations. In other cases, a family meeting might be the worst thing you can do. It depends entirely on the family dynamic. Do the children get along? Do they have the same perspective about money? Do they see the world the same way? Is there competition or resentment between or among siblings? Consider these dynamics carefully before deciding whether and how to have that conversation.

### **Special Considerations**

#### ***Protecting Vulnerable Family Members***

Let's assume that Joan decides to help with the home purchase by making an outright gift to Christina. She also wants to give \$1 million to each of Charles and Chelsea now so as to equalize among her three children. However, Joan is concerned because Chelsea has an intellectual disability and could become vulnerable if others knew she had that much money. In situation like this, we recommend establishing a formal trust, with a friend, family member, or trust company serving as trustee.

One of the biggest concerns we hear from parents of a child with a disability is about who will care for the child if he or she outlives everyone else. A well-structured trust with multiple layers of protection may offer some comfort. In Joan's case, if she passes and if Charles and/or Christina are alive, one or both may be willing to act as a trustee of Chelsea's trust, and we can include a power to appoint successor trustees if they are or become unable to act. If neither Charles nor Christina is able to act, and if there is no other relative or family member who would be suitable, a trust company may be appointed. In this case, if Charles or Christina is alive, we can include a duty to account and report, ensuring that they receive quarterly or annual statements so they can monitor how the trust is being managed. We might also include a duty to consult with them on certain matters, keeping in mind that the decision is always that of the trustee. The goal is to protect Chelsea's inheritance while ensuring she is cared for throughout her life, regardless of what happens to the rest of the family.

### ***Cross-Border Gifting***

A Canadian parent may gift any amount of cash to an adult child who is a U.S. tax resident or U.S. citizen (a "U.S. person") without tax in Canada or the U.S. (unless, of course, the parent disposes of capital assets in Canada to fund the gift, then the parent would pay capital gains tax on the disposition in Canada). If the cash



gift exceeds \$100,000 in a given year, the child must report it in the U.S. on a Form 3520, but no tax is payable by the parent or by the child.

However, if a child is a U.S. person living anywhere in the world, the child is subject to the U.S. gift and estate tax regime. According to the *One Big Beautiful Bill Act*, which came into force on July 4, 2025 in the U.S., on the child's passing, any amount in the child's worldwide taxable estate (including certain gifts made by the child during their lifetime) over \$15 million (USD), indexed for inflation, is taxed at approximately 40 percent.

Any gift of cash by a Canadian parent to a U.S. person child increases the amount of the child's worldwide taxable estate value. Let's assume Joan decides to make a gift of US\$12 million to Charles, who is a U.S. person. Once the funds are in his hands, Charles has limited planning options. He cannot gift the money without it counting towards his own gift and estate tax exemption. His own assets will also continue to accumulate—a home, investment accounts, other property. Each additional dollar contributed to this accumulation moves him closer to that \$15 million threshold



and the tax that will apply to amounts in excess of it. Therefore, any planning intended to avoid the U.S. gift and estate tax net needs to be undertaken at level—for example, using a trust for Charles’ benefit, rather than an outright gift to him.

Therefore, while a Canadian parent may make a gift of cash to a U.S. person child free of tax on the gift itself, it is important to consider the impact of the gift on the child’s worldwide taxable estate and any application of the U.S. gift and estate tax regime upon the child’s passing. If the gift is significant enough that it could push the child’s worldwide estate beyond the exemption, the parent may wish to consider using a trust structure, which may avoid the U.S. gift and estate tax net altogether. We would highly recommend retaining a qualified tax adviser before making a significant gift to a child who is a U.S. person.

### Planning With Purpose

Assisting the next generation to build financial security is one of the most meaningful things a parent can do. But as Joan’s situation illustrates, how the assistance is structured matters just as much as the help itself. Whether the parent provides the assistance by way of gift, loan, or other structure, it is important to account for family dynamics, tax implications, matrimonial risks, and one’s own long-term financial security. Be intentional and document your decisions clearly. Have any difficult conversations early. And recognize that there’s no one-size-fits-all answer. The right approach depends on your own family’s unique situation. **M**



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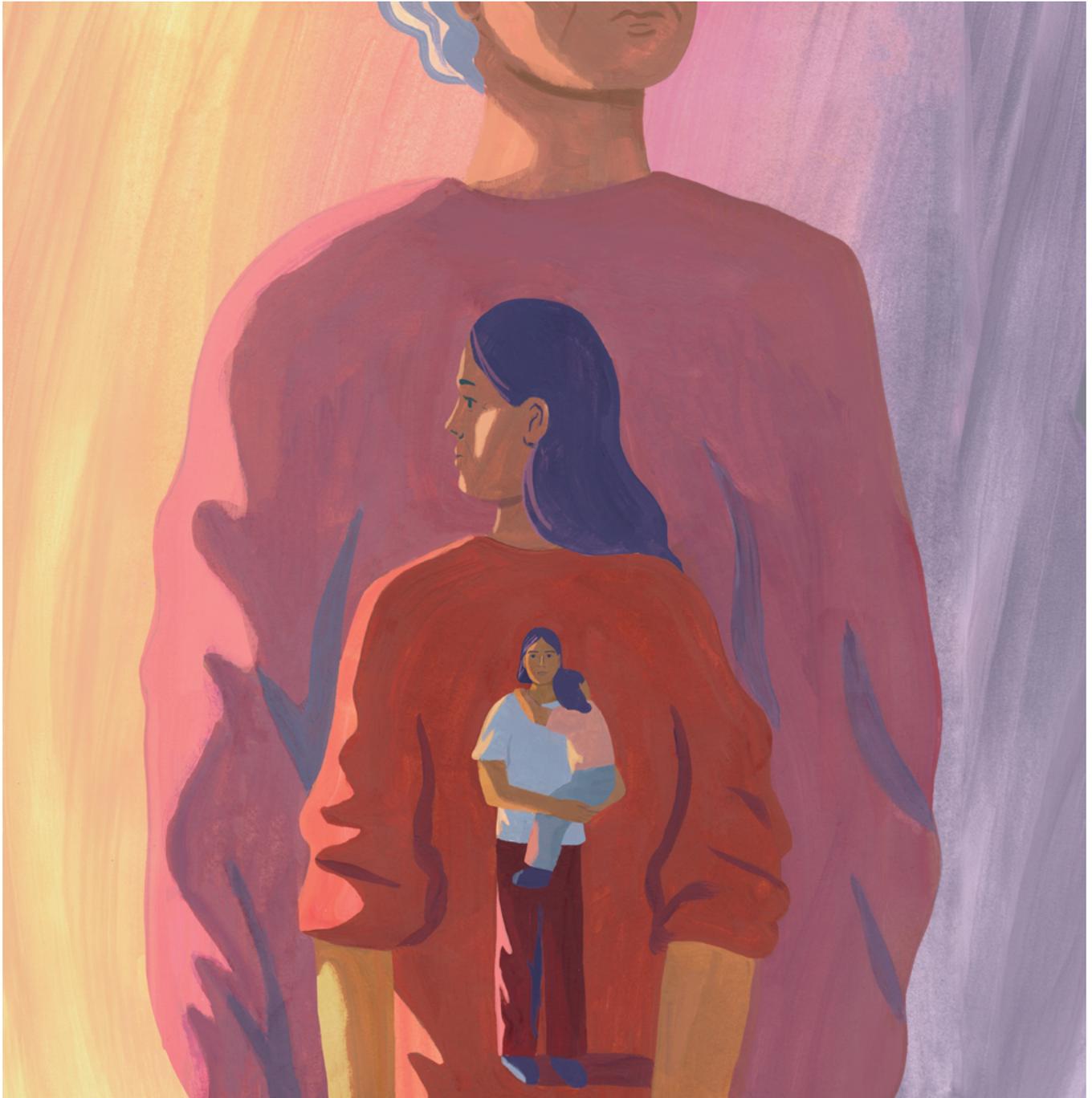
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