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Gifts Of Real Estate Really Are Gifts - And The IRS Is Looking For Them

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Typical scenario – Client's child comes in and advises **"Oh – and I own (all or part of) my parents' house."** For some reason the fact that they own another parcel of real estate is normally an afterthought. This leads to more questions, such as "How did you get the real estate?", and "Why?". Some reasons might include:

- Mom was afraid of losing the house if she got sick
- Dad was going through a divorce
- Mom and Dad didn't want me to pay taxes

All of these situations might be great reasons to consider transferring a house**, but there are many implications to a transfer of real estate, one of them being gift taxes.** The next question we ask might be "Did your parents file a gift tax return?". And the common answer … a blank look.

A Gift Tax Return (Form 709) is required to be filed in any year where gratuitous transfers to any given person exceed the **Annual Gift Tax Exclusion Amount** (presently $13,000 per person). If Mom gives you a house, she is likely to have given you more than $13,000. The Gift Tax Return (Form 709) must be filed even if no actually tax (i.e.: writing a check to the IRS) is due. So, if Mom gave you a house worth $313,000, she needed to file a Gift Tax Return (Form 709) to reflect the $300,000 gift in excess of her Annual Gift Tax Exclusion Amount, even if the Lifetime Gift Tax Exclusion Amount is large enough to shelter the gift from taxes.

What is the **Lifetime Gift Tax Exclusion Amount**? That is the amount over and above the Annual Gift Tax Exclusion Amount (presently $13,000 per person) you can give away during your lifetime without writing a check to the IRS. The Lifetime Gift Tax Exclusion Amount was $1,000,000 from 2001 to 2010, is $5,000,000 for 2011-2012, and is scheduled to return to $1,000,000 (adjusted for inflation) in 2013.

"So what?" a person might say. "If I don't have to write a check for taxes, who cares if I file a tax return?" Well, the IRS cares, and Robert W. Wood reports that the IRS is actively mining deed transfers to find property transfers where no gift tax return was filed.

Why does the IRS care, if no tax may be due? Well, it has to do with how the Federal Estate Tax is computed. When you die, the amount of prior gifts (in excess of the Annual Gift Tax Exclusion Amount (presently $13,000 per person)) is added back into your gross taxable estate to determine the value of your estate for tax purposes. Failure to report a taxable gift during your lifetime can allow your estate to understate the value of your taxable estate upon your death.

As a result, the IRS collects less than it's due – and the Executor may be personally responsible for the tax underpayment.

And why is the IRS looking at deeds now? Robert Wood reports that "After all, with the year-end estate tax compromise, estate and gift tax planning in 2011 and 2012 is going great guns. Many families are giving big."

So file those gifts tax returns. It's really not worth it not to. Penalties and interest and personal liability for your poor executor who knew nothing – not a good place to be.