



RESIDENTIAL · GUIDE

Gifting property to a child or family member

A generous plan with real pitfalls. What a gift of property actually sets in motion, and the difference between a true gift and adding someone for convenience.

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Gifting property to a child or another family member, during your lifetime rather than through your will, is a generous and common wish. It can also go wrong in ways that surprise the giver, because a gift of real estate sets in motion tax, exposure, and family consequences that are invisible when the only thing in mind is helping someone you love. This guide sets out what a gift of property actually involves in Ontario, so the decision is made with eyes open.

Land transfer tax: it depends on the mortgage

A true gift, where you transfer the property for nothing in return and there is no mortgage, generally does not attract land transfer tax, because there is no consideration. That is the clean case.

The complication is a mortgage. If the person receiving the gift assumes the existing mortgage or takes the property subject to it, that assumed mortgage debt is generally treated as consideration, and land transfer tax becomes payable on it, measured by the mortgage balance, regardless of the family relationship. So a "gift" of a mortgaged home to a child is often not free of land transfer tax at all. The special exemption that applies to transfers between spouses does not extend to a child or other relative. Before you treat a gift as cost-free, the mortgage has to be looked at, and if there is one, the land transfer tax on it has to be priced.

A true gift versus adding someone "for convenience"

A great deal of trouble comes from blurring two very different things:

- A true gift is a genuine, final transfer of ownership (or a share of it) to the family member, intended to be theirs.
- Adding someone "for convenience" is putting a child on title not really to give them the property, but to make things easier, to help with managing the home, or in the hope of simplifying matters on death.

These look identical on title and are worlds apart in consequence. Adding a child "for convenience" can be treated, legally and by the tax authorities, as something other than you intended, can expose the home in ways you did not expect, and can produce disputes after death about whether the child was really meant to own a share or merely hold it. If your actual goal is estate planning or

convenience rather than a genuine present gift, a title change is very often the wrong tool, and there are cleaner ways to achieve what you want. Be honest with yourself and your advisor about which one this really is.

The pitfalls people do not see coming

You expose the home to the recipient's life. Once a child owns a share of the property, that share can be exposed to the child's creditors if they run into financial trouble, and to a claim by the child's spouse on a marriage breakdown. The home you gave to help can be pulled into problems that are not yours and not of your making.

Principal-residence treatment can be affected. Gifting the home, or a share of it, can have tax consequences, including effects on the principal-residence treatment that shelters the gain on a home. This is an accountant's area and the numbers can be significant. Get that advice before gifting, not after.

It is usually irreversible. A completed gift is done. If circumstances change, you fall out, the child's marriage ends, you need the value back for your own retirement or care, you generally cannot simply undo it. Giving away an interest in your largest asset is not a step to take lightly or quickly.

Capacity and pressure matter, especially with aging parents. Where an older parent gifts property to a child, questions can later arise about whether the parent truly understood and freely intended the gift, or was influenced. This is a real legal vulnerability. Independent advice for the person making the gift protects them and protects the gift from being challenged later. For the same reason, the giver and the recipient should generally not rely on the same lawyer for the gift itself.

The mortgage and the lender. If there is a mortgage, you generally cannot gift the property, or a share, without the lender's consent, and the assumed mortgage is the land transfer tax trigger discussed above. Gifting without consent can breach the mortgage and let the lender call the loan due; our article on whether your mortgage lender needs to know about a title change covers this.

What to do before gifting property

- Decide honestly what this is, a true present gift, or really an estate-planning or convenience step that might be better done another way.
- Check the mortgage, both for the land transfer tax it triggers and for the lender's consent.
- Get the tax advice on principal-residence treatment and any other tax consequences before you act.
- Weigh the exposure, creditors and marriage breakdown, before putting a child on title.
- Make sure the giver has independent advice, particularly an older parent, so the gift is informed and stands up later.
- Consider whether your will is the better instrument, if the real goal is what happens on death rather than a gift today.

Bottom line

Gifting property to a family member is generous, but it is not simple and often not free. A true gift with no mortgage generally escapes land transfer tax, but an assumed mortgage is consideration and taxable for anyone other than a spouse (and even the spousal relief is conditional), the gift can expose the home to the recipient's creditors and marriage breakdown, it can affect principal-residence tax treatment, and it is usually irreversible. The most important first step is to be clear whether you actually want to make a present gift or are reaching for a title change to solve an estate-planning or convenience problem that has a better solution. Get tax advice, make sure the giver is independently advised, and talk to us before you transfer anything.

This is general information about gifting property in Ontario, not legal, tax, or estate advice for your situation. Land transfer tax, principal-residence treatment, creditor and family-law exposure, and whether a gift is the right tool all depend on your specific facts and require the appropriate advisors. Talk to us before you gift property.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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