



## Outright Gifts

JACKSON DOGGETTE (Tampa, Florida)

---



**Y**ou are an adult. You may be young. You may be old. You may be single. You may be married. You may be in a relationship considered to be nontraditional. You may have children. You may not have children. You may own real estate. You may not own any real estate but you do own some type of property. You may not have much. You may be rich. You may be healthy. You may be sick. Whatever your situation, you have decided you want some professional to make decisions about the things you own or over which you have stewardship.

Many people believe that consulting with an estate planning attorney is only important when you have decided to take steps to plan for your death. However, the word is getting out that estate planning is also about making plans that affect you while you are alive. So, you select an estate planning lawyer, and make an appointment to get some advice. At your appointment, your lawyer leads you through a discussion of, among other things, what might happen if you do not establish a plan for the things you own. Perhaps the government takes too much in taxes, or the property is distributed to heirs in ways that do not reflect your wishes. Because you do not like the results of that decision, you begin to decide what you want to do with your material possessions. Who should get them? How should they get them? When should they get them?

You may already know whom you want to receive your property. One of your options is to give your possessions away as outright gifts. You even have options regarding when and how you give outright gifts.

A gift of property, whether real or personal, is a voluntary and complete transfer from the one who owns the property to someone else without any requirements or strings attached. That means there is no payment or other consideration or expectation of anything in return for the gift.

Who can legally give a gift? The owner, who can be a person, a corporation, or another legal entity the law recognizes as eligible to give a gift.

Who can legally receive a gift? Like an owner, the recipient can be a person,

a corporation, or another legal entity the law recognizes as eligible to receive a gift. There are four requirements to meet to legally give a gift. The owner of the property must have the capacity to give the property as a gift and the intent to give the gift. The gift must be delivered to or for the recipient, and it must be accepted by the recipient. Therefore, capacity, intent, delivery, and acceptance are the four requirements for a gift to be considered a legal gift.

You have options regarding when to give an outright gift. You can give the gift while you are living. This is called an inter vivos gift. You can give the gift after you are dead through a written instrument. This is called a testamentary gift.

There are some advantages in giving outright gifts while you are living. First, you can experience the joy and good feelings that come with seeing someone receive and benefit from your gift. Second, you remove the gifted property from your estate. This might have positive tax consequences for you. This chapter is not designed to detail those advantages. However, those advantages may exist depending upon your circumstances.

Imagine giving a gift to your favorite charity which is advancing a mission about which you are passionate. That gift may be in the form of money, stocks, bonds, real estate, or anything else you own. Doesn't the very thought of giving it while you can see the good it will generate inspire joyful feelings even as you are thinking about it now?

Think about the happiness you promote by giving a gift to your spouse or significant other, your children, or a dear friend. Can you feel the warmth and gladness right now? That is probably the greatest advantage of giving an outright gift inter vivos. You are alive to enjoy the results of it.

However, there are some disadvantages in giving outright gifts while you are alive. First, you no longer have control of the property. Second, the property may be of a type that appreciates over time and you may wish for the recipient to benefit from the appreciated value of the gift at a later time. Third, there may be some negative tax consequences for you or the recipient in giving the property away during your life.

You can give the outright gift as a testamentary gift, meaning, through a testament or will after you are dead. How do you accomplish this? You might simply state what the gift is and who receives it in the language of your will. The will might say something like: *"I give my stamp collection to Joe Jones, my son."* Another way to give an outright gift by will is to use what is called a Memorandum for Distribution of Personal Property. An outright gift using a Memorandum for Distribution of Personal Property requires two steps. First, the language in your will might say something like:

*I give all of my remaining tangible personal property, together with any insurance policies covering such property and claims under such policies in accordance with a "Memorandum for Distribution of Personal Property" or other similar writing directing the disposition of such property, which shall be dated and signed by me.*

Second, you write down what you want to give and to whom you want to give the personal property on a separate piece of paper stating what the gift is, who gets the gift, and sign and date the paper. Talk with your lawyer, however, before you attempt to give an outright gift in this manner.

There are some advantages in giving testamentary gifts. First, you get to enjoy the property all the time you are alive. Second, you can direct who gets your property after you have no use for it any longer. Third, there may be some tax advantages for you and/or the recipient (such as a step up in basis) by waiting to give the outright gift through your will.

There are also some disadvantages in making testamentary gifts. First, you will not experience the joy and good feelings that come from seeing someone receive and use the outright gift from you. Second, you do not effectively remove the property from your estate before the outright gift is completed. This could have negative tax consequences. Third, the recipient could predecease you and never receive the gift.

We have briefly explored the outright gift. Whether you give an outright gift during life or after death to a person, charity, government, or other legal entity, giving is ultimately necessary because “you can’t take it with you.”

---

*Doggette Law Firm, P.L. is an estate planning and nonprofit corporate counsel law firm designed to meet the non-litigation, transactional legal needs of families and nonprofit organizations.*