

Lifetime Gifts

1. Generally

1.1 Under probate law, a lifetime gift is called an advancement. Advancements are gifts given to a beneficiary during that person's life which are counted as an offset from that beneficiary's share of inheritance.

1.2 To calculate the proper offset, the advancement is added to the value of the estate to determine the total amount or "aggregate amount" of the estate to be allocated to the beneficiaries. The aggregate amount is the amount that would have been divided equally if the advancement had not been made.

1.3 Once the aggregate amount is determined, each beneficiary's share is calculated based on the terms of the will or trust using the aggregate amount.

1.4 The share allocated to the beneficiary who received an advancement is offset by the amount of the advancement (i.e. the advancement amount is subtracted from the share of the beneficiary as calculated using the aggregate amount).

1.5 If the advancements received are greater than the beneficiary's total share, then the beneficiary receives nothing more and owes nothing back to the estate. Any remaining balances will be shared by the remaining beneficiaries proportionately.

1.6 NRS 151.130 governs advancements under a will. Even though there is no similar provision for trust, courts apply by analogy the same principles in trust matters. If specified, a will or trust can provide that a lifetime gift is not to be treated as an advancement.

2. Illustration One

2.1 Aaron has two sons, Brent and Charles. Aaron's will provides that each son will receive an equal share of his estate.

2.2 Before Aaron's death, Brent asked his father for \$100,000 to invest in real estate. Aaron consents and gives Brent \$100,000. Aaron acknowledges in writing that this is an advancement and will be deducted from Brent's share of his father's estate.

2.3 Aaron dies leaving an estate valued at \$900,000.00. The \$100,000 given to Brent is an advancement and will be added back to the estate.

2.4 The aggregate amount of the Aaron's estate is \$1,000,000.00. Brent and Charles are each entitled to 50%. Charles would receive \$500,000, and Brent would receive \$400,000. In aggregate, both Charles and Brent received \$500,000 from their father.

(a) Charles receives \$500,000 at this father's death.

(b) Brent receives \$400,000 at his father's death and \$100,000 as an advancement.

3. Illustration Two

3.1 Amanda has two daughters, Brittany and Christina. Amanda's trust provides that each daughter will receive an equal share of her Trust assets at her death.

3.2 Before Amanda's death, Brittany asked her mother for \$100,000 to start a new business. Amanda gives her daughter Brittany \$100,000. Brittany acknowledges in writing this is an advancement and will be deducted from her share of his mother's Trust assets after Amanda's death.

3.3 Amanda dies leaving a Trust estate valued at \$100,000. The \$100,000 given to Brittany is an advancement and will be added back to the Trust estate.

3.4 After adding the advancement, the aggregate amount of the Trust estate is \$200,000. Each beneficiary is entitled to \$100,000, but since Brittany already received that amount, she entitled to nothing more, and Christina would receive the remaining \$100,000.

3.5 If the remaining assets were less than \$100,000, Brittany would still get nothing from the estate, and Christina would receive what is left. Even though Brittany's share would be less than \$100,000 she already received, she does not have to pay anything back.

4. Other Considerations

4.1 A trust or will may provide that assets received outside of the trust or will can be treated as advancements. For example, if the facts are the same as Illustration One except that instead of Brent getting the \$100,000 during Aaron's life, he received \$100,000 from a life insurance policy upon Aaron's death, a similar analysis would apply.

4.2 It is always best if there is an acknowledgment in writing from either the giver or recipient that the gift is to be treated as an advancement. But, if there is no writing acknowledging the advancement, it will be up to the court to determine if the gift should be treated as an advancement. As a general rule, courts try to treat beneficiaries the

equally, and are inclined to apply advancements when lifetime gifts have been made.

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