

## **Document intentions behind *inter vivos* transfers**

There is a wide range of reasons behind individuals' decisions to transfer ownership of property. Unfortunately, legal presumptions about transfers don't always align well with the transferor's intentions, which can lead to unexpected results. Transfers that are intended to be gifts may be treated as trusts in favour of the transferor; or transfers made for expediency (for example, to allow a relative to manage one's assets) may be treated as gifts if there is evidence to rebut the presumption of resulting trust.

If you are retained to handle a transfer without meaningful consideration from an older adult to a person who might be expected to be a beneficiary under that person's will (adult child, niece/nephew, etc.), ask the parties about the reason for the transfer. Determine whether the transferor intends the transferee to hold the property in trust for him/her, and document the parties' intentions and other potentially relevant details – for example, whether the transferee has power of attorney for the transferor, and whether there are other likely future beneficiaries who may expect to share in the transferor's property. Keep notes about the reason for the transfer in your files, and send the client a reporting letter that summarizes your understanding of the purpose of the transaction.

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