

Q: Our son is looking to buy a house and we promised to help him with the down payment, or part thereof, of approximately \$100,000. What is the best way to do that to avoid any gift taxes?

Can we give him the money as part of his future inheritance, which won't be taxable up to a certain amount? Or can we give him the money and ask for a promissory note, and then my husband and I both can "give" him \$12,000 yearly until the note is paid off?

He also plans to get married in the near future. If he does and then later gets divorced, how can he make sure that that portion of the house plus appreciation will be solely his?

A: As of Jan. 1, 2009, you can give up to \$13,000 to your son (or anyone) and it will have no tax consequences for either party. In fact, you and your husband can give up to \$26,000. But that amount will not be enough to help him buy that house.

I don't like the idea of calling the money his future inheritance. I suspect that the IRS would still call it a gift. For more information about gifts and the gift tax, go to the IRS Web site (www.irs.gov) and type in "gift tax" in the search box.

I would recommend that you consider lending him the money. He will sign a promissory note as well as a deed of trust (the mortgage document), and the latter must be recorded among the land records where the property is located. If the trust is recorded, he will be able to deduct the interest that he pays you.

As for the amount of the interest, there is a concept called the "applicable federal rate," or AFR. Once again, you can get this information from the IRS Web site. These rates will tell you what the minimum rate should be.

However, your son will have to tell his lender that you plan to lend him some money. Many lenders may object, unless there will be sufficient equity in the property after adding in both the first loan and your loan. If the lender objects, then you may have to make him a gift of the full amount.

How does your son protect himself in the event of a divorce down the road? That's a difficult question to answer. He can take the house in his own name, but a divorce court might award the wife a portion of the house anyway - depending on how long they were married. Your son can also enter into a prenuptial agreement with his future wife - but that often is not easily accepted by young couples in love.