

I Want to Give My Child Money to Put Down on a House; If They Get Divorced, Does She Get That Money Back?

AUTHOR: KATHRYN DUDLEY

CONTRIBUTOR: ALLISON SCHREIBER LEE

Many parents want to support their child in a first-home purchase, and offer to give them money toward the down-payment. An issue can arise, however, if the child is married, the house is titled in joint names, and there is a divorce later. It would seem that the answer is “the money should go to that child in any sale”, but it’s not quite that clear.

If a gift is made to a title company directly, during the closing on a house in joint names, or if there is a check made out to both parties to allow them to put the money down on a house, courts in Missouri can consider the funds to be a gift to the marriage, not just to their child. Additionally, depending on how long the house is held in joint names, and how long the marriage is after the purchase of the house, a court may determine that not all the funds are a “gift” to one party.

It may be a better practice to make a check out as a gift to the child alone, for them to deposit into an account in their name only and then for the child to write the check to the title company. However, if the house is titled in joint names with the child and her spouse, the funds may still be considered a gift to the marital estate. It would be even clearer if there is a notarized document from both parties acknowledging that the funds provided by the parents are a gift to that child alone, and that in any sale of property, the proceeds from the sale should first go to the child for that gift no matter how the property is titled. While neither of these options guarantees the money will go to the child, they are still options to try to effectuate that.

The best practice would be to discuss any gift to a child with a family law attorney, before making any gift. For these or other family law questions, please contact one of the family law attorneys at Sandberg Phoenix.