

Deathbed Estate Planning

4 Areas To Focus on When Dealing With a Loved One's Estate Plan

By: James E. Berge, Esq.

Discussing estate planning matters with a gravely ill or seriously injured loved one is a difficult, sometimes seemingly impossible, task. But keep in mind that your loved one derives comfort from knowing that his or her family and final wishes will be handled. While attending to a dying loved one, you may become too distraught to remember all the tasks that must be completed to prevent the estate from falling into neglect.

To that end, we've prepared an overview of four areas on which you will want to focus. Keep this information in a safe place, perhaps with your own estate planning documents, for when the time comes.

1. Determining Power of Attorney, Wills and Guardianship

First and foremost, you will need to determine whether your loved one has executed a will and durable power of attorney for property. At a minimum, the power of attorney should give you (or some other agent) authority to handle basic banking transactions. In most states, the power to make annual exclusion gifts to close relatives (the exercise of which will reduce the taxable estate's value) must be specifically given in the power of attorney. After locating the will and power of attorney, ask your loved one to review the documents to see whether any changes are needed. If changes are warranted, ask his or her (or your) attorney to draft the revised document as soon as possible.

If no will exists, executing one at this point is tricky, but not impossible. A deathbed will is more likely to be successfully challenged than an older will -- even if your loved one is still competent. If that is the case and he or she is indeed competent, arrange to have a doctor certify to that effect, and have an attending doctor or nurse witness the will's signing.

An important point: If the loved one has minor children and there is no other surviving parent, he or she should appoint a guardian. Otherwise, the courts will make this appointment. However, if he or she is incompetent, a guardian or conservator is allowed in many states to petition the probate court to implement an estate plan for the dying relative. This process may take some time to complete.

2. Reducing Taxes

Your loved one may take advantage of his or her annual gift tax exclusion by giving away up to \$11,000 each to an unlimited number of individuals. Doing so removes those funds from the estate and, of course, reduces estate taxes. However, if the donor is incompetent, the power to make gifts may be limited by the power of attorney for property.

But remember that these gifts are "incomplete" until the recipient actually has the cash in hand. Therefore, checks aren't considered gifts until the recipient deposits or cashes them and the amount is debited from the originating bank account. If possible, give assets in the form of cash or cashier's checks. And keep a record of these types of gifts for your own peace of mind. Here are some additional deathbed strategies that may be beneficial:

Converting traditional IRAs to Roth IRAs. In some cases, this could result in substantial tax benefits for the beneficiaries if the conversion is accomplished before the owner's death because, with a Roth IRA, the entire amount is tax-free. Also, though both allow continued tax deferral after the original owner's death, the Roth IRA provides greater opportunity to transfer wealth to a younger generation. Children can take distributions from a Roth IRA over their lifetimes, whereas, in many instances, they can't with a traditional IRA. And more money is allowed to accumulate inside the account tax free with the further-spread distributions.

Accelerating deferred income. Such income would be recognized currently, and the income tax rate would probably fall below the estate tax rate on that income. Deferred income can include uncollected wages or bonuses, accounts receivable (of a cash-basis sole proprietor), accrued rent, royalties and professional fees, and accumulated interest and dividends. In most cases, the heir would pay income tax, not the estate.

Selling depreciated assets, including securities and real estate. This may allow the capital losses to be deducted from your loved one's losses on his or her final income tax return. If a depreciated asset remained in the estate, the beneficiary would have to use the current market value as the basis, erasing the capital loss.

3. Keeping Appreciated Assets

On the other hand, a dying loved one -- or you as his or her agent -- should avoid selling assets that have appreciated in value. The reason: The tax code currently allows a step-up in basis for appreciated property that is passed on to an heir.

For example, a stock that was purchased 20 years ago at \$20 per share (the basis) may today be worth \$100 per share (current market value). Selling that stock before your loved one's death would trigger capital gains tax on the \$80 gain. On the other hand, passing the stock along to an heir would change the basis to current market value, wiping out that capital gain. If the heir later sells the stock for \$110 per share, only the \$10 gain (from the date of death to the date of sale) would be taxed.

4. Handling Administrative Tasks

While your loved one is still competent, enlist his or her help in preparing an updated asset list, including business assets and partnership interests. Note the locations of safety-deposit boxes and keys. In addition to the will and powers of attorney, gather important documents such as his or her divorce decree, insurance policies, buy-sell agreements, real estate deeds, contracts and business agreements. Assemble the most recent statements from your loved one's bank account, brokerage account and pension plan; then become familiar with the debts and obligations that must be paid before and after death.

Also make a list, including contact information, of your loved one's:

- Lawyers, accountants and bankers,
- Broker,
- Financial planner, and
- Any other professionals who have knowledge of the estate.

If any documents have been misplaced, check with these individuals first for photocopies or duplicates.

Plan Ahead

Of course, the best time for anyone to plan their estate is *now*, before a life-threatening illness or injury. In general, people tend to make less rational decisions when they feel rushed because time is running out. However, if that time comes, you can help a dying loved one make smart decisions -- and remember, we're here to assist you.

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Deathbed Estate Planning Strategies To Avoid

In most cases, you should not try to establish a family limited partnership (FLP) for someone who is dying. The IRS might conclude that you set up such a partnership merely to dodge taxes and not for legitimate business purposes. Moreover, the FLP's estate and gift tax advantages would disappear. (If setting up an FLP does have a bona fide business purpose, though, the courts will generally allow the tax benefits.)

Similarly, don't establish an irrevocable life insurance trust (ILIT) for someone on his or her deathbed. To achieve its intended tax benefits, an ILIT must exist for three years before the insured's death if an existing policy is transferred to the ILIT.

In general, any major transaction conducted just before the time of death would likely be scrutinized by the IRS.