

Partial Checklist for a Terminally Ill Client

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This list is not intended to provide legal or tax advice and is not a complete list of all potential traps or planning alternatives. Always consult with a competent advisor before using any checklist.

1. The Basics. Get basic information on the client's family, personal background, goals, concerns, health, family health, assets, liabilities and documents.
2. General Power of Attorney. Sign a Detailed General Power of Attorney (perhaps in the first meeting).
 - a. With Specific Authority to make Gifts, Create & Modify Trusts, Fund Trusts,
 - b. Specifically permit the holders of the General Power of Attorney to make taxable gifts and pay any resulting gift tax.
 - c. Make sure the GPOA specifically permits the payment of annual exclusion gifts.
 - d. Limit the Power of the Attorney in Fact under the POA to make unfettered gifts to avoid having the POA be treated as a General Power of Appointment
 - e. Make sure someone is empowered and takes the Responsibility for Payment of Expenses, file Tax Returns, etc.
3. Medical Directive. Sign a Medical Directive (perhaps in the first meeting).
4. Assets & Liabilities. Determine the Estimated Values, Basis and Ownership of all Assets of the Client and any Spouse.
 - a. Assume that the Client is wrong about Beneficiary Designations, Ownership and Value. Do all you can to Double-Check what they tell you.
 - b. Determine the Assets which will Pass Outside the Probate Estate:
 - i. Determine if there are any POD, joint ownership or life insurance beneficiary designations that should change.
 - c. Determine what Liabilities may come due at Death (e.g., due on death commercial loans).
 - i. Determine if there are ways to Minimize the Exposure to such Liabilities
 - ii. Review how liabilities and taxes will be apportioned in the estate and if any changes should be made as a result of such apportionment.
 - d. Compare the Estate Tax, Income Tax and Basis Ramifications of Passing in 2013 vs. 2014
 - i. Decide what changes should be made in the Current Documents.
 - ii. Decide whether gifts should be made in 2013.
 1. Annual Exclusion Gifts
 2. Gifts using the Gift Exemption
 3. Taxable Gifts
 4. Termination of Marital Trusts
 - iii. Run a Cash Flow Projection for the client, including social security and non-taxable sources
 - iv. Include Basis Planning in any decisions
 - e. Decide whether and how the current taxable value of any Gift can be reduced.
 - f. Review this article and the articles referenced in this article and look for other planning opportunities.

5. Retirement Plans. Check all Beneficiary Designations for Retirement Plans and IRAs.
 - a. Determine if there are any Retirement Plan and/or IRA beneficiary designations that should change.
 - b. If the retirement plans are going to incur any state or federal estate tax, determine how it will be paid – but try and avoid paying it from the retirement plan.
 - c. Determine if there are any Deferred Compensation Plans, Stock Options or similar employee benefits
 - d. Consider converting Retirement Plans and IRAs to ROTH IRAs before death
 - e. Determine if there are better Alternatives for the Beneficiary Designations (e.g., charity or a conduit trust)

6. Insurance Coverage. Determine what Insurance the Client owns or benefits from and make sure it continues to be Paid;
 - a. Life insurance policies. check (and confirm with the carrier) ownership, beneficiary designations, current cash values, conversion rights and remaining term of the policies; determine what pre-death benefits the policy may contain
 - b. Long Term Care Policy
 - c. Disability Policy
 - d. Property and Casualty Policy
 - e. Check for any Veteran Benefits

7. Residency. For clients with multiple homes or who have been moved by care-givers to another state, a critical part of determining the applicable taxes and enforceability of documents is determining the client's proper state of residency. If possible, take pre-death actions designed to clarify this issue.

8. Current Documents. Review the Client's Current Estate Planning Documents and any Documents in which they Serve as a Fiduciary or have a Beneficial Interest.
 - a. Prepare a PowerPoint slide or schedule showing how the current documents pass assets.
 - b. Do the Documents reflect the Client's current desires?
 - c. Do the Documents reflect the current tax rules?
 - d. Has the client changed states of residency since the documents were executed and are there limits on their enforceability in the new state of residence?
 - e. Determine if the Client has any powers of appointment, successor fiduciary appointment rights, or other rights under existing documents and determine whether and how they could be exercised.
 - f. Determine if the Client should create, modify and/or fund a Revocable Living Trust or Will.
 - g. Review the choices for decision makers in estate planning documents and make sure the appointments still make sense (e.g., don't appoint an estranged child to hold the general power of attorney).
 - h. Determine if any trusts that will receive S corporation stock are qualified S corporation trusts and if not, change the trust terms to qualify.
 - i. Determine if any existing trusts can be decanted and determine how it should be accomplished.
 - j. Make sure the client has executed both a Medical Directive and Durable General Power of Attorney.
 - k. Determine if there are any benefits to decanting existing trusts.

9. Pre-Mortem Planning. Determine what Pre-Mortem Planning the client should address.
10. Tax Returns. Review the client's most recently filed federal and state income tax returns and see if there are existing NOLs, capital loss carryovers or other unused carryovers that will terminate at death and determine ways to effectively use those carryovers. Determine if the unrealized losses in current assets need to be preserved for heirs.
11. Appraisers. As soon as possible, line up appraisers for any assets that may be gifted, but which do not have a readily determinable fair market value.
 - a. Consider having the appraisers work in parallel with your estate planning work.
 - b. Ask for an early estimate of value to use in your early calculations, but advise your clients that any numbers are preliminary and will have to be re-run when final numbers are available.
12. Document Discussions. Document the seriousness of the issues and decisions you are asking the clients to address. Otherwise, the confusion of a loved one's death and the unexpected taxes imposed on the family may come to roost at your door.
13. The Donor's Intentions. Encourage the client to:
 - a. Prepare a document like that provides details that will be helpful to their heirs and the people handling the administration of their estate, an Ethical Will and/or Family Love Letter™ for family.
 - b. Designate who should manage any family business and set up a structure to accommodate that authority.
 - c. Identify potential sources of family conflicts after the client dies and adopt methods designed to reduce those conflicts.
14. Passwords. Obtain all of the client's access codes (e.g., to websites, computers, etc.), security codes and the like.
15. Safety Deposit Boxes and Safes. Make sure that someone else has authority to open any Safety Deposit Boxes. If there is a Personal Safe, make sure someone knows where it is and has the combination.
16. Customer Points. Determine what frequent flyer, hotel points, credit card points, etc the client has and determine if they pass automatically to heirs, or, if not, determine if the Client can gift them before passing. Obtain the pass codes.
17. Locks. Consider changing the locks on any Residence to limit unknown access to the property (i.e., a lot of personal property can disappear).