

Mom or Dad is dying - What can I do?

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Frequently we receive somewhat frantic phone calls from family members on behalf of their elderly parents who, for one reason or another, do not have much time left. While we advocate planning ahead, we realize that sometimes there is just no time to do so. The primary concern for all of our clients is their quality of life. In striving for this quality, advance planning sometimes gets pushed to the back burner. This can happen for a variety of reasons such as; an elderly parent who simply never wants to discuss the issues of planning for the inevitable, or where everyone is so busy attending to a medical crisis that there is just no time to assemble an appropriate plan. Whatever the reason, here is a helpful checklist of some common issues to address when there is a break in the action. Just addressing some simple issues can save a lot of time, money, and aggravation once a loved one dies.

The primary goals are to avoid unnecessary court proceedings as well as to reduce tax exposure on several levels, both for the decedent's estate and the heirs, as well as to honor the decedent's wishes for the ultimate distribution of her/his assets.

Remember, assets owned by the decedent in her/his sole name that do not have a named beneficiary are subject to a formal court probate process, which is not always ideal. Many clients with modest savings and assets can be subject to a lot of unnecessary court costs, legal fees and taxes that could waste a substantial portion of a small estate. Of course, wealthier clients may have more complex assets resulting in the need for more sophisticated planning, but for purposes of this checklist, we will focus on what things to review in a modest estate (i.e. under \$200,000):

1. **Check the Title on Bank Accounts.** If a person owns a bank account (checking, savings, money market, credit union, or CDs), in her/his sole name, these accounts, upon death, are in effect "frozen" until a court appointed personal representative can access them. Immediate access to cash after death may be a high priority. So, a quick fix is to simply add one or more adult children's names to the parent's bank account. Specifically, the account must be titled as "Joint Tenants with Right of Survivorship", which basically allows the surviving joint owners to continue to access the account after the parent's death. Distinguish this type of ownership from other common arrangements such as "Power of Attorney" or simply having "signature authority" over a bank account. These types of arrangements automatically lapse upon death and will not be helpful. You have to actually ask the bank representative to verify that the account is properly established ("titled") so that another person is a co-owner with survivorship rights.
2. **IRA Beneficiaries.** Many people now have many different types of deferred income tax investment accounts. This can be in the form of Traditional IRAs, Roth IRAs, 401ks, 403bs and 457 Plans. Within these tax deferred vehicles, many investments such as CDs, annuities, mutual funds, stocks and bonds can exist. Regardless of the underlying investment, the IRA

must have named designated beneficiaries on the account. This can be verified by contacting the IRA or plan administrator (or financial advisor) and verify, in writing, who is named as a beneficiary. If no beneficiary is named, unfortunately, the account will be subject to probate. Worse yet, the IRS may accelerate the deferred taxes upon the death of the parent which defeats the purpose of “stretching” the tax deferral for future generations. We often see this when a single parent dies and he/she only named a previously deceased spouse as the only beneficiary and never updated the beneficiaries after the first spouse died.

3. **Life Insurance Beneficiaries.** Some clients buy multiple small life insurance policies that stay in force for decades without any attention paid to them and, often forget they even have the policies. These policies need to be checked and verified that a living person is the named beneficiary. Otherwise, a life insurance company may require that an Executor be appointed by the court to retrieve the life insurance benefits. In the alternative, if a person is named as the beneficiary, he or she can simply file a claim with the insurance company after the parent dies and obtain the check.

Incidentally, life insurance proceeds in Pennsylvania are exempt from inheritance tax. Sometimes, life insurance policies are assigned to a funeral home so that these funds can be paid directly to the funeral director. Be cautious however in the event that the life insurance proceeds exceed the funeral costs because it may be difficult to access the leftover funds without court action. Practically, that depends on the life insurance company and the funeral director and how flexible they may be.

4. **The House.** Most single elderly people own a home in a sole name for many years and upon her/his death, the house will have to go through probate. If there are special circumstances where a parent intends to leave the home to a particular child, probate can be avoided by having the parent transfer the deed to the property directly to the child. However, because the home has been in the parent’s name for many years, there may be an unrealized capital gains tax surprise waiting for the next person who sells the property gifted to her/him.

Also, if the house (or any asset for that matter) is transferred less than one year prior to the parent’s death, it will be subject to Pennsylvania inheritance tax. So, the parent must weigh the issues of avoiding probate, capital gains tax and inheritance tax before making this last-minute transfer. Generally, this analysis can be done quickly so that the best decision can be made considering the circumstances.

5. **Vehicles.** Many people own a car and families tend to focus on this asset even though it is typically not very valuable. However, it is not necessary to rush out and transfer the title to the car to a family member or find a buyer. PennDOT has a form (MV-9) that allows the next of kin to transfer the car after death without having to go through a formal probate process. However, if the car is functioning, the family members should check to make sure it is properly insured, inspected and registered with the State.
6. **Safe Deposit Boxes.** These are locked boxes located inside a bank vault. These boxes were more common years ago, but they can become a real nuisance if left unattended, especially if the

contents are unknown. There are two options in dealing with safe deposit boxes. First, you can simply go to the bank and empty the contents of the box and close the account. Or, you can add another person's name to the account so that it can be accessed after death. However, be aware that in order to determine the contents of the box after death, you must make an appointment with a Revenue Officer from the state to inventory the box contents for purposes of inheritance taxation, even if the contents are not valuable.

7. **Personal Property.** Like the family car, many people focus on how to deal with the personal effects of the parent. In absence of a written testamentary document of the decedent, families should consider dividing up the assets, most of which may be primarily of sentimental value. Contrary to popular belief, the state is not generally interested in an inventory of old furniture, clothes and other miscellaneous items. Of course, if items or collections of significant value are present, they should be properly appraised and reported to the appropriate tax authorities.
8. **PA Inheritance Tax.** Speaking of tax, in Pennsylvania (and for modest estate values), the primary tax to be concerned with at the eleventh hour is the PA inheritance tax. As stated previously, life insurance proceeds are not taxable at death, and neither are assets that are given away by the decedent more than one year prior to the date of death. In addition, if an asset is made joint with another owner more than one year prior to death, the proportionate share of ownership transferred is not taxed either. The tax rates are as follows: 0% tax between spouses, 4.5% tax to lineal descendants, 12% tax to siblings, and 15% tax to everyone else. The inheritance tax return does not have to be filed until nine months after the decedent dies. However, there is a 5% discount on the amount of tax owed if paid within three months following the date of the decedent's death.

In summary, this checklist provides a general guide to some options that can be deployed "at the last minute" when a family member's death is certain and may provide some relief in post mortem maneuvers. These items are simply some options and will not apply in every situation. Family members who are concerned about their situation are encouraged to contact experienced legal counsel to confirm the appropriate choices for their particular situation.

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