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ESTATE PLANNING LIBRARY

Number Fourteen

Ensuring the Success of Death Bed Gifts

An Overview

1. What is a Death Bed Gift and why are they used?

While perhaps indelicate, the term Death Bed Gifts refers to gifts made when a client is virtually certain to die within a few days or perhaps hours. Death bed gifts are a very effective method to reduce the taxable estate of the terminal client. Generally, the gifts are intended to utilize the client's annual tax free gift of \$10,000 indexed for inflation, to any person, without a limit to the number of persons.

2. How are Death Bed Gifts made?

Frequently, the client will be mentally or physically incapable of making decisions as to gifts. In that case, the attorney-in-fact, or agent, acting for the client under a durable power of attorney for property decisions, will make the gifts as the client's agent (See Why Your Power of Attorney for Property and Living Trust Need to Allow the Power Holder to Make Gifts). Frequently they are the same person, but for property held in the client's living trust, the successor trustee would also need a power to make gifts. Frequently, the power holder simply writes checks to every conceivable family member to maximize the reduction in the client's taxable estate. As we will see later, using checks can be quite risky.

3. How does the client's family members benefit from Death Bed Gifts?

Let's assume that the client has an estate of \$1,500,000 in 2003. The client has four children, 12 grandchildren and 7 great grandchildren. If no death bed gifts are made, the client's estate taxes would be:

Taxable Estate	\$1,500,000
Estate Taxes	(210,000)

Net to Heirs \$1,290,000

Now let's assume the power holder writes an \$11,000 check to each family member. That totals 23 checks for a grand total of annual exclusion gifts of \$53,000. The gifts reduce the client's taxable estate to \$1,247,000 (\$1,500,000 - \$53,000) that incurs estate taxes of:

Taxable Estate	\$1,247,000
Estate Taxes	<u>(119,700)</u>
Net to Heirs	\$1,170,300
Death Bed Gifts	<u>253,000</u>
Net to Heirs	\$1,423,300
Without Planning	<u>(1,290,000)</u>
Savings	\$133,700

4. Benefit from Death Bed Gifts \$133,700

If the client's death is near the beginning of the year, gifts could have been made in the prior year and the year of death for greater savings. Assuming the same facts as in three above, total gifts of \$506,000 in December and in January \$253,000 resulting in savings of \$194,830.

5. Why did you say using checks is a risky method to make Death Bed Gifts?

There is a concept in making gifts that refers to a gift needing to be complete before it is considered a gift and therefore qualifies to remove property from the client's estate. Taxpayers are continually losing court cases because the client dies before the bank actually pays the holders of the checks. Take our fact situation as an example. If the client dies before the client's bank **actually pays the check amounts**, the gifts will have been incomplete because the client, through his or her power holder, could have stopped payment on the checks. The family loses the \$133,700 in otherwise available estate tax savings.

6. How can the risk of incomplete gifts be avoided?

The power holder should obtain cashier's checks upon which a stop payment order cannot be made. The power holder can also have the gifts electronically transferred to the donees. It is a small thing, but a failure to properly make Death Bed Gifts can be a very expensive proposition.

7. What does the estate planner do in a Death Bed Gift situation?

The planner makes sure that the family is aware of the ability to make Death Bed Gifts and assists the power holder in properly funding the gifts to avoid incomplete gifts. Help evaluate any gift that may produce a better result than a cash gift.

8. What are the power holder's responsibilities?

The power holder must implement the estate planner's instructions accurately and without delay.