

# *COVID-19 Legal Update*

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## **PANDEMIC AND 2020 ELECTION ESTATE PLANNING: SOME FREQUENTLY ASKED QUESTIONS**

By Jon Vegosen, Vance L. Liebman and Diana R. Larson

Estate planning documents are particularly important during these unprecedented and unpredictable times. Below, we answer some common questions regarding estate planning in the context of COVID-19 and the upcoming election. With the continuing escalation of the coronavirus pandemic, and with the 2020 November elections looming, we have found that many of our clients are revisiting and updating their estate plans, and those who have postponed estate planning are now ready to get an estate plan in place.

### **Are there any time-sensitive things I need to think about with respect to estate planning?**

Yes. They relate to some important tax planning opportunities that could well evaporate or shrink very soon. If the assets of you or you and your spouse, including your home and life insurance, are approaching or above the level of the Illinois (\$4,000,000) or federal (\$11,580,000) tax exemption levels, then you should confer with a professional about options for advanced planning and ways to reduce taxes. Current conditions may make it an opportune time to consider advanced planning techniques:

- The Tax Cuts and Jobs Act, enacted in 2017, continues to provide extraordinary opportunities for lifetime, testamentary, and generation-skipping gifts. The historically high exemption rates are already set to expire in 2025, however, there is much speculation about whether the coronavirus pandemic or the results of the November 2020 elections will result in a change in the law implementing an earlier termination date for the current favorable rates. Indeed, depending on the results of the election, the exemption rates could be substantially reduced, thereby resulting in estate taxes for significantly smaller estates. If an individual or couple is in a financial position to make gifts, it would be wise to consider completing them before the November elections, in order to take advantage of the high exemption level before they may be rolled back. Gifts can be made that will consume the high exemption without depriving the family of the use and control of the money.
- Interest rates have never been lower. For certain planning opportunities, low interest rates can result in more efficient wealth transfers for families with taxable estates.
- Due to favorable laws, planning for the use of life insurance and life insurance trusts can be useful not only to protect your loved ones but also to provide liquidity and reduce or offset taxes.
- The Coronavirus Aid, Relief, and Economic Security (CARES) Act lifted the requirement for required minimum distributions from qualified retirement accounts for 2020. For clients contemplating conversion of a traditional IRA or 401(k) to a Roth IRA, there may be an additional benefit of converting more of the account to a Roth IRA in 2020.

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### **What other planning should I be thinking about at this time?**

Now is a good time to evaluate your current estate planning documents, both to confirm the individuals named as your executors, trustees, and agents under powers of attorney for health care and property. You should also review the beneficiaries named to receive your assets upon your death.

### **How can I sign my documents while practicing social distancing?**

Each estate planning document has different requirements for signature, however, most require a notary stamp and one or more witnesses. Remote signings have been temporarily authorized in Illinois. Our office can arrange a remote signing with witnesses and a notary.

### **How do I make sure I appropriately deal with all of my assets?**

Specific asset classes are handled differently in the course of an estate administration. Real estate, personal belongings, cash and the contents of safety deposit boxes are commonly administered through your will and revocable living trust. Here are some additional asset classes to which you may want to pay special attention:

- **Beneficiary designations.** Certain assets, including insurance policies and retirement accounts, are transferred after your death according to beneficiary designations that you appoint with the asset administrator. Now is a good time to make sure that your beneficiary designations are up to date.
- **Digital assets.** Digital assets include everything from your email and social media accounts, to your online bank accounts, to cryptocurrency. Some power of attorney forms, wills, and trusts specifically grant the agent the authority to access digital assets. Even so, it is a good idea to review your digital assets, as well as the passwords used to access those assets, so that your agents will have access to them when necessary.
- **Genetic material.** If you have harvested genetic material and are keeping it in storage, now is a good time to revisit the contract that governs the use and ownership of that material in the event of your disability or death.

### **Is it important to have a business succession plan?**

If you own your own business, it is imperative that you establish a business succession plan. Succession planning involves creating a plan for both management and ownership succession in the event you retire, become disabled, or pass away. A good succession plan will reduce expenses, and planning ahead can help address family and business needs and meet retirement goals. Succession planning can also enhance the value of a business by strengthening buyer confidence that the success of the business does not solely rely on the owner for critical management and sales functions.

### **A family member recently passed away. What's next?**

While the coronavirus pandemic has forced the administration of estates to be handled remotely, courts are open and hearing cases, and banks and administrators are open and managing account transactions remotely. If you have recently lost a loved one, either from COVID-19 or from other causes, you may have questions about how to proceed. It is advisable to contact experienced attorneys promptly to help guide you through the estate administration process, especially because some aspects of estate administration may be time sensitive. For example, in Illinois, the will of a deceased person must be filed in the county where the person resided within 30 days of the date of death.

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## What documents do I need for my estate plan?

Anyone 18 or older requires some level of estate planning. As a quick reference, basic documents include a Will, a Power of Attorney for Healthcare, a Power of Attorney for Property, and, in most situations, Revocable Living Trust. For a more detailed discussion, see our [October 2019 newsletter, “Estate and Financial Planning is Not Just for the Rich.”](#)

## Conclusion

This newsletter does not discuss all of the details and factors that may be important to your estate planning. If you are beginning your estate planning or considering revisions to your current plan, it is important to consult with legal counsel regarding your own questions and concerns and to tailor a plan that is right for you.

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