

Basic Estate Planning for (Senior) Lawyers

by Frank Overton Brown, Jr.

The fundamentals of estate planning are **the same for lawyers as they are for other individuals**, but there are **additional aspects** of estate planning that are applicable **to lawyers** in general, and **to senior lawyers**¹ in particular, especially those who are **sole practitioners**.

Estate planning is an ongoing process. It consists of fact gathering; determining client intent and formulating goals; analyzing the effects of various taxes and other factors; and designing, drafting and implementing the estate plan. There must be a periodic review and adjustment of the plan, based upon changes in laws, personal and asset situations, or client wishes. This article is intended to be a general overview of basic estate planning, as well as a review of some important factors to be considered in estate planning for lawyers.

Fact gathering is the critical first step. The use of well-organized forms is essential, and care must be taken to gather complete and accurate data, including personal, asset, liability, and other information. In addition to using his or her own skills, the lawyer may consult with another member of the bar, a certified financial planner, a certified public accountant, a life insurance professional, or a bank trust officer, bearing in mind the particularly confidential nature of certain aspects of an attorney's estate. This team approach often produces a synergism that results in a considerably enhanced estate plan. A condensed estate planning checklist form appears on pages 34–36 as Appendix A. The “three Ps of estate planning” should be used as a guide in focusing the estate planning process:

1. **People**—Who are the people involved, and what are their needs that must be addressed?
2. **Property**—What is the property available to meet the needs of the people involved?
3. **Plan**—After identifying the people and property, what is the plan that meets the needs of the people involved, using the property available and considering the effects of estate and gift, generation skipping transfer, and income taxes?

Under the current unified United States estate and gift tax laws, the estate of every person dying in 2000 has an applicable exclusion amount (or equivalent exemption) of \$675,000.00 that passes free of estate and gift taxes (it is commonly called an

equivalent exemption because there is a direct credit against the tax owed, which direct credit is equivalent to an exemption of \$675,000.00).² This exemption may be used up during one's lifetime and/or at death, and is in addition to the exclusion of \$10,000.00 per donee per year for gifts during the donor's lifetime.³ It is also *in addition* to the lifetime exclusion of “qualified transfers” paid directly to an educational institution for the education or training of an individual, or directly to a provider of medical care for an individual.⁴ Furthermore, there is an unlimited estate tax deduction for any amount of property given to a qualified charity at death.⁵ As a result of the marital deduction for estate and gift tax purposes, an unlimited amount of property may pass estate and gift tax free from one spouse to the other at the death of the first spouse to die;⁶ this transfer may be outright, in trust (such as a general power of appointment marital trust, or a qualified terminable interest property marital trust)⁷, or, if the recipient spouse is not a United States citizen, in a qualified domestic trust.⁸ As a result of the marital deduction, an estate of any size can pass to the surviving spouse free of estate and gift taxes. The problem that often arises is that the surviving spouse's estate is then larger than the equivalent exemption as shown below, resulting in substantial estate taxes at the surviving spouse's death. The Taxpayer Relief Act of 1997 established an increasing equivalent exemption, to be phased in over a period of years as follows (the dollar amounts of the phase-in are “back-loaded.” There is no significant increase until 2004):

Year of Death	Equivalent Exemption Which Passes Free Of Estate Tax
2000 and 2001	\$675,000.00
2002 and 2003	\$700,000.00
2004	\$850,000.00
2005	\$950,000.00
2006 and later	\$1,000,000.00 ⁹

In order to reduce or eliminate those estate taxes, husbands and wives may re-arrange titling of assets and beneficiary designations in order to equalize their estates and in order to enable the first spouse to die to establish a “credit shelter” trust for the benefit

of the surviving spouse. This “credit-shelter” trust will provide for the surviving spouse, but will not be taxed in the estate of the second spouse to die. One benefit of the credit shelter trust is that, while the credit shelter trust may be established at the amount of the equivalent exemption for the year of death of the first spouse to die, if the value of the assets in the credit shelter trust grows prior to the death of the second spouse to die, that increased value remains sheltered, and passes to the remaining beneficiaries free of estate taxes.

In general, some of the important considerations in estate planning are: planning for incapacity or disability (avoiding guardianships¹⁰ and conservatorships); avoiding intestacy; saving estate taxes; providing financial management; taking care of and protecting beneficiaries; preserving assets; appointing one’s own choice of executor, trustee, or other fiduciary; and avoiding probate and maintaining privacy. In addition, lawyers need to be concerned with matters related to the concluding of a law practice. These include: a written plan for the orderly concluding of the practice; the designation of another Virginia-licensed lawyer to assist the executor in that regard; and the maintenance and identification of an easily understandable system of records to help the other lawyer to carry out his or her responsibilities, including properly dealing with client property that may be in the lawyer’s possession. In the event that the lawyer has not made such plans, the Virginia State Bar will be required to have a receiver appointed to do this.¹¹ (See letter on page 31.)

In planning for someone to act in the event of the lawyer’s disability or incapacity, the lawyer may wish to have three separate durable powers of attorney:¹² a durable general power of attorney; a durable health care power of attorney; and a durable power of attorney dealing specifically with the law practice, and appointing a Virginia-licensed attorney at law as attorney-in-fact to deal with all matters related to the law practice. In addition, if it is consistent with his or her wishes, the lawyer can execute an advance medical directive¹³ to assist in decision making, should the lawyer become terminally ill.


At death, assets may pass by will,¹⁴ in which case they will be subject to probate and will become a matter of public record, or they may pass by various probate avoidance devices, such as: revocable living trust (which may be funded or unfunded during

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lifetime);¹⁵ joint tenancy with the right of survivorship as at common law and tenancy by the entirety with right of survivorship as at common law;¹⁶ beneficiary designation;¹⁷ and payable on death (POD) designation and transfer on death (TOD) designation.¹⁸ Care should be taken when using these various probate avoidance devices that the estate tax planning structure of the estate plan is not inadvertently circumvented. In other words, the

estate plan should be one in which asset titling and values, beneficiary designations, and documents are part of an integrated whole—not just a series of unrelated parts.

There is a greater array of estate planning techniques (that are beyond the scope of this article) available to the senior lawyer, depending upon the lawyer’s goals, including, without limitation: irrevocable trusts (life insurance and other); charitable remainder trusts; lifetime charitable giving; lifetime non-charitable giving, including gifts under the Virginia Uniform Transfers To Minors Act;¹⁹ family partnerships; generation skipping transfer tax planning; and educational savings accounts (qualified state tuition programs).²⁰

In summary, estate planning for a senior lawyer is essential. This prior planning will be in the best interests of the senior lawyer, the senior lawyer’s clients, the senior lawyer’s beneficiaries, and the Virginia State Bar. 

See **APPENDIX A** on the following pages.



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Endnotes

- 1 A senior lawyer is defined as one who is 55 years of age or older.
- 2 I.R.C. Section 2010(c)
- 3 I.R.C. Section 2503
- 4 I.R.C. Section 2503(e)
- 5 I.R.C. Section 2055
- 6 I.R.C. Section 2056
- 7 I.R.C. Section 2056(b)(7)
- 8 I.R.C. Section 2056(A)
- 9 H.R. 8 (Death Tax Elimination Act of 2000), which was passed by the Congress and vetoed by the President, would have eliminated estate, gift and generation-skipping transfer taxes for decedents dying after December 31, 2009, but would have, subject to certain exceptions, re-instituted “carry over” basis for assets passing at death. In addition, for decedents dying after December 31, 2000, the “unified credit” for each year would have been converted to a true exemption, which would have allowed the exemption to be applied at the top range of the estate’s value, and therefore against the estate’s highest marginal estate tax rate.
- 10 Va. Code Ann. Section 37.1-134.6 et seq.
- 11 Va. Code Ann. Section 54.1-3900.01
- 12 Va. Code Ann. Section 11-9.1 et seq.

endnotes are continued on page 36

APPENDIX A

ESTATE PLANNING CHECKLIST FOR LAWYERS
PERSONAL AND CONFIDENTIAL

DATE FORM COMPLETED: _____

NAME: _____
 LAST FIRST MIDDLE

DATE OF BIRTH: _____

VIRGINIA STATE BAR #: _____

WORK ADDRESS: _____

HOME ADDRESS: _____

MILITARY VETERAN: YES OR NO LIST BRANCH AND YEARS OF SERVICE: _____

CIRCLE APPROPRIATE MARITAL STATUS: MARRIED / SINGLE / DIVORCED / WIDOWED

IF DIVORCED, GIVE DATE AND PLACE OF DIVORCE: _____

IF DIVORCED, GIVE NAME OF EX-SPOUSE: _____

LIST ANY OBLIGATIONS TO EX-SPOUSE BY AGREEMENT OR COURT ORDER: _____

LIST ANY OBLIGATIONS TO CHILDREN BY AGREEMENT OR COURT ORDER: _____

IF WIDOWED, GIVE NAME OF DECEASED SPOUSE: _____

IF WIDOWED, GIVE DATE OF DEATH OF DECEASED SPOUSE: _____

IF MARRIED, GIVE DATE AND PLACE OF MARRIAGE: _____

SOC. SEC. #: _____ - _____ - _____

U.S. CITIZEN: YES OR NO

PLACE OF BIRTH: _____

NAME OF EMPLOYER: _____

WORK PHONE #: (_____) _____ - _____

HOME PHONE #: (_____) _____ - _____

YOUR PARENTS:

FATHER' NAME: _____
 LAST FIRST MIDDLE

MOTHER'S NAME: _____
 LAST FIRST MIDDLE

ADDRESS: _____

ADDRESS: _____

SPOUSE'S INFORMATION:

NAME: _____
 LAST FIRST MIDDLE

DATE OF BIRTH: _____

VIRGINIA STATE BAR #: _____

WORK ADDRESS: _____

MILITARY VETERAN: YES OR NO LIST BRANCH AND YEARS OF SERVICE: _____

SOC.SEC. #: _____ - _____ - _____

U.S. CITIZEN: YES OR NO

PLACE OF BIRTH: _____

NAME OF EMPLOYER: _____

WORK PHONE #: (_____) _____ - _____

SPOUSE'S PARENTS:

FATHER'S NAME: _____
 LAST FIRST MIDDLE

MOTHER'S NAME: _____
 LAST FIRST MIDDLE

ADDRESS: _____

ADDRESS: _____

CHILDREN OF THIS MARRIAGE:

NAME: _____

BIRTHDATE: _____

NUMBER OF CHILDREN: _____

ADDRESS: _____

MARRIED: YES or NO

CHILDREN BY PREVIOUS MARRIAGE(S) (IF ANY):

NAME: _____

BIRTHDATE: _____

NUMBER OF CHILDREN: _____

ADDRESS: _____

MARRIED: YES or NO

WHOSE CHILD: _____

GRANDCHILDREN:

NAME: _____

BIRTHDATE: _____

NUMBER OF CHILDREN: _____

ADDRESS: _____

MARRIED: YES or NO

WHOSE CHILD: _____

A. ARE ALL THE MEMBERS OF YOUR FAMILY IN GOOD HEALTH? IF NOT PLEASE DESCRIBE ANY MENTAL OR PHYSICAL HEALTH CONDITIONS: _____

B. ARE YOU THE BENEFICIARY OF ANY ESTATES OR TRUSTS, DO YOU HOLD ANY POWERS OF APPOINTMENT, OR DO YOU ANTICIPATE RECEIVING ANY INHERITANCES? IF SO, PLEASE DESCRIBE: _____

C. ARE YOU OR YOUR SPOUSE ACTING AS EXECUTOR OR TRUSTEE OF ANY ESTATES OR TRUSTS? IF SO, PLEASE DESCRIBE: _____

D. LIST BANK NAMES, ADDRESSES, TELEPHONE NUMBERS, AND ACCOUNT NUMBERS FOR ALL ATTORNEY TRUST ACCOUNTS: _____

E. LIST THE NAME(S), ADDRESS(ES), AND TELEPHONE NUMBER(S) OF THE LAWYER(S) WHO WILL BE RESPONSIBLE FOR HANDLING YOUR PRACTICE IN THE EVENT OF YOUR DEATH OR DISABILITY: _____

F. IF THERE IS A WRITTEN AGREEMENT OR SET OF INSTRUCTIONS REGARDING YOUR LAW PRACTICE, WHERE IS IT LOCATED? _____

G. DO YOU HOLD IN SAFEKEEPING ANY ORIGINAL CLIENT DOCUMENTS OR PROPERTY? IF SO, WHERE ARE THEY KEPT? _____

H. NAME, POLICY NUMBER AND RENEWAL DATE OF PROFESSIONAL LIABILITY INSURANCE POLICY: _____

I. PROPERTY ADDRESS OF ANY PROPERTY OF WHICH YOU ARE THE LESSEE: _____

J. NAME, ADDRESS, AND TELEPHONE NUMBER OF LESSOR OF ANY PROPERTY OF WHICH YOU ARE THE LESSEE: _____

K. NAME, ADDRESS, AND TELEPHONE NUMBER OF COMPANY PROVIDING SECURITY SERVICES TO YOUR LAW OFFICE: _____

L. NAME, POLICY NUMBER, TELEPHONE NUMBER AND ADDRESS OF LONG TERM CARE INSURANCE PROVIDER: _____

M. NAME, POLICY NUMBER, TELEPHONE NUMBER AND ADDRESS OF DISABILITY INCOME INSURANCE PROVIDER: _____

N. PLEASE LIST ANY OTHER ADVISORS/PROVIDERS YOU MAY HAVE, INCLUDING:

NAME	ADDRESS	TELEPHONE
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ACCOUNTANT: _____

BROKER/INVESTMENT ADVISOR: _____

CEMETERY: _____

FINANCIAL PLANNER: _____

FUNERAL HOME/CREMATORY: _____

HOSPITAL: _____

INSURANCE AGENT: _____

PROFESSIONAL LIABILITY INSURANCE CARRIER: _____

RELIGIOUS ADVISOR: _____

OTHERS: _____

O. LOCATION AND BOX NUMBERS OF BANK SAFE DEPOSIT BOX(ES): _____

P. NAME, ADDRESS, TELEPHONE NUMBER, AND ACCOUNT NUMBER(S) OF LAW FIRM BANK ACCOUNT(S): _____

ASSET INFORMATION

*NOTE: IN THE FOLLOWING QUESTIONS, **FMV** = FAIR MARKET VALUE; **COST** = COST BASIS; **TITLED** = IN WHOSE NAME AN ASSET IS TITLED; **ACQUIRED** = DATE ACQUIRED; **MTG BAL.** = MORTGAGE BALANCE; **MGE** = LENDER (MORTGAGEE)

I. REAL ESTATE

DESCRIPTION	LOCATION	HOW TITLED	WHEN ACQUIRED	ORIG COST	CURRENT MTG BAL.	MGE	FMV
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II. MARKETABLE SECURITIES

NAME	# OF SHARES	FMV/SH	HOW TITLED	WHEN ACQUIRED	ORIG COST	FMV
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III. ACCOUNTS RECEIVABLE, MORTGAGES AND NOTES (MONEY WHICH OTHER PEOPLE (DEBTORS) OWE TO YOU)

DEBTOR	DESCRIPTION	HOW TITLED	WHEN ACQUIRED	ORIG COST	FMV
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IV. LIFE INSURANCE

COMPANY & POLICY #	POLICY TYPE	WHO OWNS POLICY	BENEFICIARY	SECOND BENEFIC.	HOW PAYABLE	DEATH BENEFIT(S)
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V. CASH AND CASH ITEMS

BANK	ACCOUNT TYPE	HOW TITLED	FMV
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VI. CLOSELY HELD BUSINESS INTERESTS

NAME	LOCATION	BUSINESS TYPE	% INTEREST	HOW TITLED	FMV
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VII. TANGIBLE PERSONAL PROPERTY AND MISCELLANEOUS PROPERTY

DESCRIPTION	HOW TITLED	FMV
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VIII. HAVE YOU OR YOUR SPOUSE MADE ANY GIFTS IN EXCESS OF \$10,000.00 IN ONE YEAR TO ANY ONE PERSON IN THIS OR ANY OTHER YEAR? IF SO, PLEASE DESCRIBE AND SAY IF GIFT TAX RETURNS WERE FILED, WHERE, AND IF ANY TAX WAS PAID, THE AMOUNT:

DONEE	YEAR	FILED (YES or NO)	LOCATION	AMOUNT PAID
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IX. ANNUITIES, IRA'S, THRIFT, SAVINGS, PROFIT-SHARING, PENSION, AND OTHER QUALIFIED PLANS

NAME	TYPE PLAN	BENEFICIARY	SECOND BENEF.	TYPE BENEFIT	HOW PAYABLE	DEATH BENEFIT
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X. DEBTS

NAME OF CREDITOR	TYPE	CO-OBLIGORS	ORIGINAL BAL.	HOW PAYABLE	BALANCE
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XI. WERE ANY OF THE ABOVE ASSETS RECEIVED BY GIFT OR INHERITANCE? IF SO, DESCRIBE:

DESCRIPTION	RECEIVED BY WHOM	FROM WHOM	WHAT YEAR	HOW	COST
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XII. PLEASE LIST AMOUNT OF YOUR INCOME AND SOURCES OF INCOME:

XIII. ADDITIONAL COMMENTS OR INSTRUCTIONS:

endnotes continued from page 33

- 13 Va. Code Ann. Section 54.1-2981 et seq.
- 14 Va. Code Ann. Section 64.1-45 *et seq.* It is recommended that a lawyer have a provision such as this in his or her will: "I designate and appoint Joseph Lawyer, a licensed attorney at law in Virginia, to assist my Executor in the concluding of my law practice. I confer upon said attorney all powers conferred by law, in order to permit said attorney to carry out his duties. In the event that Joseph Lawyer predeceases me, is unable or unwilling to serve, or begins serving and does not complete the service, I authorize my Executor to select another attorney at law licensed in Virginia to assist my Executor in the concluding of my law practice. The attorney shall be entitled to reasonable compensation at the time that the attorney's services are rendered, based upon the attorney's usual and customary rate of compensation."
- 15 Va. Code Ann. Section 64.1-73 et seq.
- 16 Va. Code Ann. Section 55-20 et seq.
- 17 When dealing with individual retirement arrangement or qualified plan beneficiary designations, it is critical that great care be taken in the determination of the proper beneficiary and in the wording of the beneficiary designation. The effects of income taxes, as well as estate taxes, are also important considerations.
- 18 Va. Code Ann. Section 64.1-206.4
- 19 Va. Code Ann. Section 31-37 et seq.
- 20 I.R.C. Section 529