

ESTATE PLANNING FOR SIMULTANEOUS DEATHS

Simultaneous deaths of husbands and wives are neither rare nor unique. Couples die together in highway crashes every year, for example. Whatever the circumstances of these tragic deaths, they can present serious estate tax problems unless precautions have been taken.

Most couples hold their property in joint tenancy. When one spouse dies, the estate generally passes to the surviving spouse free of estate taxes. Each spouse is usually named as beneficiary of the other's retirement accounts, individual retirement account and life insurance policies, so these will bypass probate. The need for more advanced estate planning techniques, such the use of various trusts, might be appropriate for couples facing potential estate taxes, or where there has been a remarriage, but the joint tenancy arrangement works fine for many couples.

However, the joint tenancy approach falls apart if the couple dies at the same time, or under circumstances where it can't be determined who died first. The problem is that most states, following what's called the Uniform Simultaneous Death Act, treat each spouse as having survived the other spouse. In the case of life insurance, for example, it's presumed the insured outlives the beneficiary, and the money goes to the secondary or contingent beneficiary. Deaths may be treated as simultaneous under the law even when one spouse dies within five days after the other one if both died due to a common accident. And some states have modified that act for people surviving as much as 120 days.

The result of this law is that the jointly held property of each spouse cannot pass to the other spouse because the other spouse is presumed to have died before the other spouse. Got that? It's like two people trying to go through a door where each insists the other one goes first, and neither one ends up going through.

Consequently, the jointly held property of each spouse, including insurance proceeds and retirement accounts, goes into separate probate. This is a nuisance for their heirs and increases administrative expenses. For couples with enough assets to face estate taxes, however, it can be very expensive.

Fortunately, couples can avoid this problem by planning ahead. Start with the will. Attorneys can insert a clause that states who will be considered the survivor in the event of simultaneous deaths. This can reduce administrative expenses and probate hassles since the estate of the spouse deemed to have died first passes to the "surviving" spouse with the marital deduction. Then, of course, the estate of the second spouse must be settled.

This also can help where there are estate tax issues. Take the situation where one spouse has a personal estate worth \$200,000, while the estate of other spouse is worth \$1.15 million. If the wealthier spouse dies first, the estate plan might be set up so that \$475,000 is passed on to the "poorer" spouse under the marital deduction. The remaining \$675,000 is passed on to the children, perhaps through a trust. However, without proper language written into the will regarding simultaneous deaths, this strategy could fail. If the spouses die at the same time, each estate would be treated separately and there would be no marital transfer. Thus, the portion of the \$1.15 million estate above the \$675,000 estate tax exemption for the year 2000, \$475,000 would be taxed \$187,000. Meanwhile, the estate of the poorer spouse is able to make use of only \$200,000 of the \$675,000 exemption, essentially "wasting" part of the exemption.

Naming a contingent beneficiary for such assets as life insurance policies, retirement accounts and individual retirement accounts also can minimize probate problems. A contingent beneficiary is a beneficiary who receives the proceeds in the event the primary beneficiary, who would be your spouse, dies before you do, exactly what happens in simultaneous deaths.

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