

STRAUSS MALK & FEDER LLP
PLANNING DURING A LIFE-THREATENING ILLNESS

While all of the following actions may not be applicable in all situations, the following is a list of some of the actions that should (or in some cases, must) be taken during a life-threatening illness and, if the illness becomes terminable, during the period following death. Please let us know if you would like our assistance with any of these actions.

ACTIONS TO BE TAKEN DURING LIFE-THREATENING ILLNESS

1. **Review Estate Plan and Beneficiary Designations.** Review Wills and other estate planning documents to make sure they are up to date for tax planning, beneficiary designation and fiduciary designation purposes.

2. **Probate Avoidance-Transfers to Revocable “Living” Trust.** In order to avoid probate, transfer any assets held in the individual’s sole name into the name of such individual’s Revocable Trust. Assets held in joint tenancy with rights of survivorship or tenancy by the entirety need not be transferred since such assets bypass probate and instead pass by operation of law directly to the surviving joint tenant. Assets held in the individual’s sole name will pass to the Revocable Trust at the individual’s death if the Will “pours-over” such assets to the Revocable Trust, but these assets will have to go through probate.

3. **Assignment of Tangible Personal Property to Revocable Trust.** Assuming that the Revocable Trust provides for the disposition of such items, we recommend that an Assignment be executed to transfer all of the individual’s tangible personal property, including jewelry, clothing and other personal belongings, to the individual’s Revocable Trust. The owner (or an Agent acting under a Durable Property Power of Attorney) should execute the Assignment.

4. **Tax-Free Annual Exclusion Gifts.** If your estate is likely to be subject to federal or state estate taxes, make up to \$15,000 (\$30,000, if the individual’s spouse consents) in annual exclusion gifts to family members (and any other donees, as appropriate) in order to take advantage of the annual per donee gift tax exclusion. Note that gifts of tangible personal property could be made as annual exclusion gifts. Delivery of such gifts needs to be completed prior to the donor’s death for the gift to be effective to reduce the individual’s taxable estate for estate tax purposes. With cash gifts, the checks should be cashed before death, or cashier’s checks, certified checks or wire transfers should be used to make sure the gifts are completed before the donor’s death. If giving partnership interests or other non-cash assets, make sure the donees sign and date receipts prior to the donor’s death. Caveat: If specifically authorized by the Trust, such gifts should be made from the Donor’s Revocable Trust. If such gifts are not authorized by the Trust such gifts should instead be made by the donor (or an Agent under a Durable Property Power of Attorney) from the donor’s personal accounts. If available, use cash or high-basis assets, because lifetime gifts do not receive a step-up in basis at the donor’s death. If the individual owns only low basis assets, consider borrowing funds so he or she can make cash gifts and still get a basis step-up for the low-basis assets at death.

5. **Durable Power of Attorney for Property.** The individual should have a valid and current Durable Property Power of Attorney. The Power of Attorney authorizes a designated relative or friend as an Agent to handle the individual's financial matters. The Power of Attorney can be used to transfer assets to the individual's Revocable Trust to avoid probate, make tax planning gifts and avoid formal guardianship proceedings in the event of the individual's incapacity. Caveat: Make sure the Power of Attorney specifically authorizes the agent to take the desired actions.

6. **Power of Attorney for Health Care and Other Health Care Directives.** Make sure the individual has a valid Health Care Power of Attorney and, if desired, a Living Will and other health care directives. The Health Care Power will enable the individual's Agent to make health care decisions if the individual becomes unable to make such decisions for himself or herself. Review the individual's wishes regarding life sustaining treatment with the Agent under his or her Health Care Power, and with physicians, hospitals and other health care providers.

7. **Safe Deposit Box.** If the safety deposit box is held jointly, no action needs to be taken. If the box is in the individual's name alone, consider closing the box, transferring it to the owner's Revocable Trust, or adding a trusted family member as a joint owner to facilitate entry to the box during the owner's illness and after the owner's death.

8. **Appointment of Successor Trustees for Revocable Trust.** If the individual would like to accelerate appointment of successor Trustees, the individual should sign a document resigning as Trustee. Alternatively, if the individual is not able to resign due to his or her illness, the terms of the trust should be followed to accomplish the trustee succession.

9. **Life Insurance, IRAs and Employee Benefits.** Make sure all life insurance premiums are paid on time and beneficiary designations are up to date on life insurance policies, IRAs and employee benefit plans.

10. **Gifts to Minimize State Estate Tax.** If the individual resides in Illinois or another state which imposes no gift tax but imposes an estate tax which has been "de-coupled" from the federal estate tax, substantial lifetime gifts of high basis property or cash may save significant state estate taxes.

11. **Online Accounts.** Make an inventory of passwords for all online accounts, such as banking, bitcoin, credit card and investment accounts, entertainment and social networking accounts and travel award accounts. Determine which accounts should be shut down or modified to enable use by another person during the owner's life and after the owner's death.

12. **Obituary, Funeral and Burial Instructions.** The individual should consider writing his or her own obituary, funeral and burial instructions. If not already owned, purchase an appropriate burial plot or vault.

ACTIONS TO BE TAKEN AT OR SHORTLY AFTER DEATH

1. **Anatomical Gifts.** Determine whether the individual wants to make an anatomical gift of the body for medical research and, if so, arrange with the hospital to complete any such gifts.
2. **Funeral Arrangements.** Determine whether the individual has left any burial or cremation instructions or other direction concerning disposition of their bodily remains and contact the funeral director to make visitation and funeral arrangements. Determine whether any prepaid or pre-need funeral plan is in place. Contact the individual's place of worship, if any, and make arrangements for services. Consider whether memorial services should be held at more than one location. Directions may be in the individual's Power of Attorney for Health Care, Will or informal letter of direction.
3. **Cemetery Arrangements.** Determine location of family cemetery lots (if any) or contact a cemetery to make arrangements for disposition of remains.
4. **Contact the Attorney.** The attorney may have information concerning anatomical gifts, funeral arrangements or cemetery arrangements, and will advise you of the legal steps that must be taken. The attorney will make arrangements to meet with the family and Executor to discuss the administration of the estate.
5. **Death Notice/Obituary.** Contact the newspaper(s) in which you wish to include a death notice and provide them with the relevant information. You might prepare a draft of an obituary, although the newspaper(s) will ultimately write their own.
6. **Gifts to Charity Instead of Flowers.** If you desire, you may include in the death notice that gifts be made to named charities in lieu of sending flowers.
7. **Notify Friends, Relatives and Business Associates.** The individual's address book may be helpful in determining who should be notified.
8. **Security of Property.** Arrange for security of any assets, such as jewelry or other valuables kept at home. Arrange to have someone watch the individual's home while family members are at the visitation and funeral services.
9. **Death Certificates.** Several copies should be ordered through the funeral director.
10. **Mail.** Notify the post office of the death and who is to receive the decedent's mail. Notify newspapers and magazines to cancel subscriptions.
11. **Estate Documents.** Locate the original Will, Revocable Trust and other relevant estate planning documents, and deliver them to the attorney. The documents may be located in a safe deposit box or may have been kept by the decedent's attorney for safekeeping.
12. **Credit Cards.** Cancel all of the decedent's credit cards, unless there is a surviving spouse who does not have credit in his or her own name.

13. **Assets.** Prepare a list of assets as of the date of death owned by the decedent, in his or her Trust and in joint tenancy, and give their approximate values.

14. **Life Insurance.** Obtain all life insurance policies, notify life insurance companies of the death and collect life insurance proceeds.

15. **IRAs and Employee Benefits.** Notify the decedent's employer and IRA custodian and review all options available to the designated beneficiaries.

16. **Other Benefits.** Notify the Social Security Office and Veteran's Administration (if applicable) of the death, and file claims for pension and profit-sharing plan benefits, Social Security benefits and Veteran's benefits. Ask the funeral director to apply for social security lump sum death benefit (if applicable).