

WHEN SHOULD YOU REVIEW YOUR ESTATE PLAN?

By: Peter L. Reiss, J.D., LL.M.

Once you have created an estate plan, it is important to keep it up to date. You will need to revisit and possibly review your plan after certain key life events.

First or Subsequent Marriage

You will need to update your estate plan after you get married. A spouse does not automatically become your heir once you get married. Depending on state law, your spouse may get one-third to one-half of your estate, and the rest will go to other relatives. You will need a will to specify not only how much you wish your spouse to get but also whether your spouse is to inherit specific assets.

There are other “non-testamentary” (outside of your Will) ways to leave assets to a spouse, for example, titling assets in joint names or naming your spouse as a beneficiary of an investment or bank account, retirement plan or insurance policy.

If your marriage is not your first one, you and your new spouse should discuss where each of you wants your assets to go at either of your deaths. If you have children from a previous marriage, this is particularly important. While most people want to assure that their spouses are provided for, there is no guarantee that if you leave your assets outright to your new spouse, he or she will provide for your children after you are gone. There are a number of options to insure that your children are provided for, including, for example, making lifetime gifts; creating a trust for your children; creating a trust that pays income to your spouse for his or her lifetime and then pays the “remainder” to your children; making your children beneficiaries of life insurance policies or retirement plans; or giving your children joint ownership of property.

Even if you don't have children, there may be family heirlooms that you wish to keep in your family. You can make special provisions in your Will to insure that this will occur.

Children

I often tell clients with minor children that naming a Guardian for a minor child is the most important decision that you will make in your Will. If you do not name someone to act as legal Guardian, the Court will choose the Guardian. Because the Court does not know your children like you do, and does not know the other significant people in your family or your close friends, the person that the Court may choose may not be the one that you would have chosen. In addition to naming a Guardian you may also wish to have your Will set up a Trust for your children so that your assets are set aside for your children when they get older, but not paid to them outright at the age of majority. I often draft trusts that distribute assets to children incrementally as they reach certain ages. Of course, the Trustees in wills I draft are generally authorized to use trust assets at any time for a child's health, education, maintenance and support.

When your children become adults, you may wish to update your plan. Obviously they will no longer need a guardian, and they may not need a trust. You may want your children to act as Executors or Trustees or Agents under your Power of Attorney.

Sometimes it is not necessary to make changes. For example, once your children no longer need a Guardian, it is not necessary to revise your will to remove the provision that appoints a Guardian. It is unnecessary and will simply be ignored. If your child is a beneficiary of a trust that terminates when he or she turns 35 and then pays the assets outright to the child, you do not need to amend your Will when he or she attains age 35. The assets would be paid directly to your child.

Divorce or Death of a Spouse

If you get divorced or your spouse dies, you will need to review your entire estate plan, including your Will and your various beneficiary designations. Depending on how you structured your Will in the first place, it may not be necessary to draft new documents. For example, your Will may provide that your assets go to your spouse at your death, but if your spouse does not survive you, they go to your children. If this is the case and your spouse dies, it will not be necessary to revise your Will. It is likely that your spouse is named in some capacity in your estate plan, for example, as a beneficiary, executor, trustee or Agent under your Power of Attorney. Your Will or Trust or Power of Attorney may provide for successor fiduciaries in the event that your spouse can no longer serve, and in this case, it may not be necessary to revise your documents. However, it is advisable to review all documents just to be sure that changes do not need to be made. The same goes for your beneficiary designations on your retirement plans and insurance policies.

Increase or decrease in assets

One part of estate planning is estate and inheritance tax planning. When your estate is small, you don't usually have to worry about federal estate taxes because estates over a certain amount (\$5 million in 2011 and 2012, reverting to \$1 million in 2013 if current law does not change) are subject to federal estate tax. As your estate grows, you may wish to create a plan that minimizes these estate taxes. If you have a plan that focuses on tax planning but you experience a decrease in assets, you may wish to change your plan to make it more flexible.

Other reasons

Other reasons to review your estate plan, and possibly draft new documents, include (i) moving to another state; (ii) changes in federal or state estate tax laws; (iii) a guardian, executor or trustee that you appointed is no longer able to serve; and (iv) you wish to change your beneficiaries or the manner in which they inherit your assets. In any event, I recommend that clients review their estate plans at least every three years.