

When to Review your Estate Plan: The 5 Ds

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You finally sat down with an estate planning attorney after years of procrastination and created an estate plan that reflects your wishes: can you file it away with the rest of your important documents and never think about it again? Not exactly. As a rule of thumb, you should review your estate plan every three years or when there are significant tax changes at the state or federal level - much like the changes (likely) on the horizon this January. However, if your life has been touched by the 5 D's - Death, Disability, Divorce, Distance, and/or Descendants you should speak with your estate planner right away.

Death

When a family member or close friend dies, there are a few reasons to trigger a review of your own estate plan. First, the deceased loved one may have left you a significant inheritance that changes the schematic of your own estate plan from a tax perspective. Receiving a large inheritance will necessitate a review of your plan to ensure that you have considered the tax ramifications of the same. Second, the deceased loved one may have been named as a fiduciary in your estate plan. If you named the deceased loved one as your agent under a Power of Attorney, or Health Care Proxy, it is important to review those documents to make sure that you have an alternate agent and if you do not, you should update those documents right away. In your own Will, if the deceased loved one is a beneficiary of your estate, are you satisfied with who will inherit from you instead of the deceased loved one? It is often necessary to revise the plan of distribution considering a loved one's death.

Disability

Receiving a diagnosis of an illness or life altering condition for you or a loved one can be overwhelming. In addition to grappling with the realities of a diagnosis, it is imperative to review your estate plan from the lens of that disability. For example, if your spouse is diagnosed with a memory impairment condition such as dementia or Parkinson's Disease, your estate plan should be reviewed by an elder law attorney to make sure that your assets are held in a trust that will allow for Medicaid eligibility in the future to pay for care one day. If a beneficiary in your Will is now disabled and relies on public benefits to pay for his care, you may wish to revise your own Will to direct that your disabled loved one's bequest is left in trust for him, so that his future inheritance will not disqualify him from the benefits upon which he relies for his disability. If you received a diagnosis, you should make sure that those you nominated as your agents under your Power of Attorney and Health Care directives are the people you still entrust with these particularly important and vital roles.

Divorce

If your marital status changes - a divorce, or a new marriage, your estate plan will certainly change. In the case of a divorce, each of your estate planning documents should be reviewed. If your estate plan was created during your marriage, it is likely

that you chose your former spouse to act as your agent under a Power of Attorney and Health Care Proxy and as Executor or Trustee under your Will or Trust. In many states, a divorce will automatically end such an appointment without changing your documents - but not in every state. In addition to reviewing your documents, you should also consider the assets that have beneficiaries to ensure that your former spouse is not named as a beneficiary on your retirement savings plan, life insurance, and other financial accounts. In the case of a new marriage, it is important you have a discussion with your new spouse about your assets entering into the marriage and your wishes as related to the distribution of those assets in the event of your death. In many cases, spouses enter into pre- or post-nuptial agreements to address estate inheritance issues and estate planning documents should reflect those agreements.

Distance

If you relocate from the state where your estate plan was created, it is important to have your estate planning documents reviewed by an attorney licensed in your new home state. Laws vary greatly from state to state with respect to rules of inheritance, asset protection, and estate taxes. While states do honor other states' documents under the Full Faith and Credit Clause of the US Constitution, each state has its own forms and provisions that may make a revision of your estate plan in the new state more practical and cost-effective in the future. In addition to your own move, if a fiduciary that you have named in your Health Care Proxy or Power of Attorney moves across the country it should be considered whether it is practical for that person, who now lives in a different time-zone, to continue in that role. It becomes even more complicated in the case of a fiduciary moving out of the United States. In New York for example, if you name a person as your executor who resides in a foreign country, it is unlikely the Court will honor your choice and instead appoint someone else as an executor.

Descendants

It is imperative to create an estate plan when you have children. In 2020, I generally do not have to remind clients that bad things happen. In the unfortunate event that you and your spouse or partner die with minor children, it is imperative that you make an election with respect to your children's care. A Will should provide a guardianship provision for your minor children in the event of your death. Leaving this information out of your Will or relying on a Will that was created before you became a parent could be catastrophic for your minor children. If you are a single parent, the importance of a Will with a guardianship clause is exponential. If you die without a guardianship provision, anyone in your child's life could petition the court for her guardianship. The court will decide guardianship based on your children's "best interests" - which might not match what you would believe to be in your children's best interests. In the case of a grandparent who excitedly amended her Will to include her first grandchild as a beneficiary, it is important that her estate plan is updated for each new grandchild.

With all of this in mind, it is important to think of your estate plan as fluid. Whether it is a new presidential administration or one of the 5 D's, it is so important to stay in touch with your estate planning attorney and review your estate plan to make sure it is reflective of your current life circumstances.