

Do I Need to Update My Estate Plan?

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If your life changes, so should your estate plan. Marriage, divorce, death of a spouse, a birth and a changing relationship with a child are just some of the life changes that may affect your estate plan. Unfortunately, as your life changes, updating your estate plan is often not the first thing on your mind.

Estate planning is not a one-and-done process. Over time, you can find yourself with an estate plan that no longer fits your situation. Reviewing your estate plan at least once every few years ensures that your needs and goals are properly addressed.

In order to ensure that your asset distribution objectives are met, you should review the dispositive provisions in your Last Will and Testament or revocable trust. These documents spell out how your assets will be distributed at your death – whether you want your assets to go outright to your designated beneficiaries or whether such assets should remain in trust for a period of time following your death. As your children mature and grow up, these provisions may change based upon their particular life circumstances.

If you have a revocable trust, in addition to a regular review of the trust's dispositive provisions, you should periodically review the trust funding. Perhaps the most widespread estate planning mistake is failing to fund a revocable trust. A trust is created to avoid probate and establish a process under which assets will be managed in case of disability or death. However, a revocable trust instrument only controls assets titled in the name of the trust (either during lifetime or transferred to the trust upon death). For this reason, it is important to confirm your assets have been retitled in the trust name or that such assets have an appropriate beneficiary designation to transfer such assets to the trust at your death (e.g., POD or TOD designations). If you have acquired assets since your initial funding of the trust, confirm that those new assets have been appropriately titled in the trust's name.

It is also important to review the provisions in your Last Will and Testament or revocable trust setting forth who you have appointed to handle matters for you. The death of, changes in your relationship with, or the ability of, an individual you have chosen to serve in a fiduciary capacity should certainly prompt a review to determine whether a change to the individual or institution you previously named is warranted under the circumstances. These relationships include:

- Trustee (the individual or institution that will administer and manage your revocable trust when you can no longer serve)
- Guardian (the individual who will have the legal authority and responsibility to care for your minor child)
- Executor of your estate (the individual or institution that will administer and manage your probate estate)
- Attorney-in-Fact (the individual you authorize to act on your behalf to make business, personal, legal or financial decisions if you become incapacitated)

- Health care agent (the individual you authorize to make medical decisions on your behalf if you become incapacitated)

Another often forgotten concern is updating beneficiary designations on assets such as life insurance and retirement plans. These assets are governed by beneficiary designations and not your Last Will and Testament or revocable trust (unless your estate or trust is the designated beneficiary). It is amazing how often you will see an ex-spouse still listed as the beneficiary of a substantial life insurance policy.

Regularly reviewing and, if necessary, updating your estate plan can help you identify issues before they become a problem that frustrates your intent and avoid common estate planning mistakes. It also ensures that your carefully crafted estate plan continues to address your wishes and concerns as your life circumstances change.