

Is It Time to Update the Estate Plan?

Consider These Triggering Events to Avoid Potentially Disastrous Results

BY TODD C. RATNER, ESQ.

One of the most significant gifts that you can give your family members is a well-planned estate that saves them money, time, and taxes, and spares them from complexity in the event of your incapacity or death. However, estate planning is not a one-time process.

If you created an estate plan that is now collecting dust in a safety deposit box or drawer, it is a good idea to review that plan, because few people live a stagnant existence.

Changes occur whether we want them to or not. Many people with properly drafted estate plans fail to update them when certain triggering events in life occur. Such events are particularly significant from an estate-planning perspective, and as such, people with once-appropriate plans are subject to documents that don't properly address their circumstances upon their incapacity or death.

That said, there are many reasons to update your estate plan — even if it seemed perfectly fine at the time it was drafted. The following transactions and life events are excellent occasions to consider making some changes.

Marriage

A change in your marital status will require significant changes to your estate plan. Even those with relatively modest wealth should update their estate plans when getting married. It is imperative to recognize that pre-marriage estate-planning documents do not usually reflect post-marriage

intentions.

Moreover, fiduciaries and beneficiaries named in your estate plan documents and beneficiary designations on bank accounts, retirement accounts, life insurance, and other accounts should likewise be reviewed.

You may also wish to consider a prenuptial or postnuptial agreement to clarify rights upon

divorce or death, particularly if one spouse has children by a previous marriage or if either spouse has family wealth set aside for future generations. As such, solid estate planning may be the greatest gift a newly married couple can bestow on each other.

Change in Laws

Over time, it is inevitable that there will be changes in tax and estate-planning laws at both the state and federal levels that will affect your estate plan. Changes

should be put in place quickly, especially if the end of the marriage was not harmonious.

geous change in recent years is a revision in the way that distributions from a retirement account are taxed. Effective Jan. 1, 2007, a non-spouse beneficiary can roll over a qualified plan to an 'inherited IRA' after the plan participant's death. With an inherited IRA, a non-spouse beneficiary can use his or her own life expectancy to determine required minimum distributions. This change is commonly referred to as a 'stretchout.' By stretching out the taxes on retirement accounts, beneficiaries can turn them into powerful, multi-generational accounts. This is a tremendous opportunity that should not be ignored.



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Estate planning is a lifelong process, not a one-shot deal, and your plan needs to change as your life and the laws change.

Divorce

The end of a marriage is particularly disruptive to an estate plan, so anyone contemplating divorce should consult with an estate-planning attorney. The objectives one had before divorce, such as providing for that spouse, have most likely changed. As part of the divorce process, wills and trusts must be replaced or revised; beneficiary designations on accounts such as bank, retirement, and life insurance must be updated; and jointly owned assets with the former spouse must be retitled. A new plan

in the law can be advantageous or disadvantageous. For instance, in 2001, federal rules were put in place protecting medical privacy (commonly referred to as HIPAA, the Health Insurance Portability and Accountability Act). This law, while protecting your privacy, can be problematic if you become incapacitated and someone who is supposed to act on your behalf cannot get the necessary medical information to make an informed decision. This may prevent them from acting as you intended.

If your estate has not been updated since 2001, your health care proxy will most likely not contain the appropriate HIPAA release, which allows those who serve as your health care agents the right to receive your medical records. It is highly recommended that you amend your health care proxy to reflect this change in law.

On the other hand, an advanta-

Birth of a Child

The birth of a child, especially a first child, can drastically alter your estate plan. You will want to name a guardian for the child or children in the event that both parents die when the child is still a minor. You may also wish to revise your will and trusts to stagger the distribution so that he does not receive all of your assets at the tender age of 18, in the event that both parents are deceased. Life-insurance coverage and a 529 plan or other higher-education-funding vehicles may also be considered.

Illness

In the event that you or one of your family members becomes seriously ill, you may wish to consider revising your estate plan to accommodate the increased needs of that individual. This is especially true if a family mem-

ber has special needs and receives governmental assistance. A special trust may be required to support this special-needs individual without disqualifying him or her from receiving government benefits. In addition, those over the age of 50 may start considering the financial ramifications in the event that they may one day require long-term care.

Change in Residence

If you have moved from one state to another, you may find it beneficial to update your estate

plan to reflect your change in domicile. Although estate-planning documents are typically valid from one state to another, each state has its own peculiarities. If you do not update your documents, you may be remiss in capitalizing on provisions not previously available to you in your prior state. For example, states have different estate-tax thresholds and signing requirements that often make out-of-state prepared documents no longer appropriate and/or valid.

Do not be lulled into a false

sense of security once your initial estate plan is in place. Estate planning is a lifelong process, not a one-shot deal, and your plan needs to change as your life and the laws change. Consider working with an attorney who focuses his practice on estate planning. All attorneys licensed to practice law can draft documents, but someone who does so on a regular basis has a particular set of expertise in estate planning that can best protect your assets, spouse, and children. Therefore, it is important to consult with a qualified estate-planning attor-

ney to review your plan periodically. ❖

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