

WILL/TRUST UPDATE

WHEN AND HOW OFTEN SHOULD I REVIEW AND UPDATE MY WILL AND/OR TRUST

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REPORT FROM COUNSEL

It is our pleasure to keep you apprised of insights, developments and changes affecting today's legal world, businesses and estates. By understanding and gathering insight into these developments and issues you can take the necessary action to insure a prosperous future.

There is no one simple answer to this question and, in fact, prudent estate planning involves the consideration of a myriad of factors including, but not limited to, a material change in family circumstances and/or developing tax law. Thus, it is important to view estate planning documents as evolving throughout one's lifetime rather than as stagnant documents which, once executed, are final and complete. In fact, more often than not, estate planning documents often undergo many changes before they find their final form.

Many provisions of Will and Trust documents are dependent upon current tax law and, because tax law is constantly changing, these documents should be reviewed every three (3) to five (5) years. Wills and Trusts should also be reviewed if there has been a material change in circumstances including, but not limited to:

1. A change in the Testator/Settlor's circumstances such as:
 - a. The acquisition of more property or wealth.
 - b. A significant change in income or ability to earn income.
 - c. The addition or removal of beneficiaries.
 - d. The addition or removal of charitable bequests.
 - e. Receipt of an inheritance.
 - f. The purchase or acquisition of a business.
 - g. The purchase or acquisition of real property.

- h. A change in real property ownership.
 - i. Re-location to another state of domicile.
 - j. A change in marital status or a pending change in marital status (i.e. marriage, divorce or remarriage)
 - k. The birth or adoption of a child.
 - l. Before a major medical operation or procedure.
2. A change in the beneficiary(ies) circumstances such as:
 - a. When a minor beneficiary attains the age of eighteen (18) or twenty-one (21).
 - b. The marriage of a person named as a beneficiary.
 - c. The birth of a child of a beneficiary (i.e. the birth of a grandchild).
 - d. When there is a special needs beneficiary.
 - e. The death of a person named as a beneficiary.
 3. A change in a Fiduciary(ies) circumstances such as:
 - a. If an Executor or Trustee moves away.
 - b. Any major health issues of an Executor or Trustee.
 - c. The death or incapacity of an Executor or Trustee.

It is also important to review fiduciary appointments upon a significant increase in, or change in the source of, a Testator/Settlor's wealth. If wealth has significantly increased or changed so as to become more complex, a Testator/Settlor should consider naming a Corporate Fiduciary as Co-Executor or Co-Trustee along with the Individual Fiduciary named under the instrument. In many instances a Corporate Fiduciary is superior to an Individual Fiduciary because a Corporate Fiduciary can oversee the investment and distribution of Estate and Trust assets under one institutional umbrella and may enable clients to avoid the familial discord and power struggles which often surface during Trust and Estate administration. Also, a Corporate Fiduciary can safeguard against the wrongful distribution of Trust assets, waste of Trust income and principal and the familial friction and marital discord that inherently arises when a family member or friend acting as Individual Executor or Trustee oversees distributions to the beneficiaries of an Estate and/or Trust.

The review of a Will and/or Trust document is especially important upon divorce, separation and/or remarriage. Upon divorce or separation, a Will and/or Trust must be reviewed to ensure that an ex-spouse is not named as fiduciary or beneficiary under the instrument. However, more importantly, upon re-marriage it is especially important to review a Will as families merge. Because of this merger, a person may want to provide for their second-spouse upon death while ultimately ensuring that children from a previous marriage inherit his/her estate. To make certain that this desire is properly carried out, a Will must be prudently drafted to provide for the second-spouse during their lifetime, obtain a marital deduction for this transfer in the first-to-die spouse's estate and ultimately leave the first-to-die spouse's estate to beneficiaries of that spouse's choosing.¹

In summary, estate and tax planning is an ever-changing and evolving discipline. Consequently, Wills and Trusts should be reviewed periodically by a competent estate planning attorney who is familiar with the caveats of, and relevant changes in, tax law and

estate planning techniques.

If anyone has any questions or inquiries concerning this subject matter, do not hesitate to contact us. Feel free to email us your questions or comments concerning this newsletter.

¹ Under 26 USCS § 2056 spouses enjoy an unlimited marital deduction for transfers at death; however, the surviving spouse must have full ownership of the transferred property for the first-to-die spouse to receive a marital deduction for this property in their estate. An exception to this rule is 26 USCS § 2056(b)(7) which allows an estate tax marital deduction for Qualified Terminable Interest Property [QTIP]. A QTIP is a testamentary trust which allows for the marital deduction in the first-to-die spouses estate and gives the surviving spouse a life-estate in the transferred property. Upon the death of the surviving spouse the property will pass to whomever the first-to-die spouse names as the ultimate beneficiary of the property under his or her Will (i.e. prior children, etc.).

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

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