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SHOULD YOU TRUST YOUR ESTATE PLAN?

Estate Plan Reviews Ensure Protection for Your Family and Assets

AMERICAN ACADEMY of Estate Planning Attorneys

IS IT TIME TO UPDATE YOUR ESTATE PLAN?

Michael Crichton is one of the bestselling authors and screenwriters of all time. His estate was worth many millions of dollars when he died at age 66, leaving behind a pregnant wife. Crichton had a will and a trust, but they had not been reviewed or updated. So, they did not mention the son who would be born just months after Crichton's death.

Crichton was a resident of California, and like many other states, California has laws that protect children who are accidentally disinherited by their parents. There was a problem with Crichton's will. It contained a provision that specifically disinherited any relative not specifically named in the document. Did he *really* mean to disinherit his unborn son, or had he just forgotten to update his estate plan?

This was one of many questions that sparked messy litigation over Michael Crichton's estate.

Estate Planning is a Process

Many people think of estate planning as a *life event*. You spend some time with your estate planning attorney and talk about your goals, plans, dreams, and fears for the future. Then your attorney helps you decide exactly what form your estate plan should take, draws up all the right paperwork for you to sign, and voila! Your estate plan is "finished."

Reality is not quite that simple. Estate planning is more of a *process* than an event. Putting together an initial plan is the essential first step, but life and laws keep changing after you put your estate plan in place. Therefore, you need periodic estate planning reviews and updates to keep pace with the changes going on around you.

So when should you contact your estate planning attorney and schedule a review appointment?

CHANGES IN YOUR LIFE

Marriage, Divorce, or Remarriage

Major milestones in your life, like getting married, divorced, or remarried, call for a review of your estate plan. You'll want to take a close look at your will or trust to make sure the people you've designated to serve as fiduciaries, such as your executor or trustee, are still the people you want to hold those important positions.

This is also the time to take a fresh look at the people whom you have designated as beneficiaries. For example, if you are newly married but your will says all your assets should go to your college sweetheart – whom you haven't seen in five years – you'll likely want to make some changes.

It is important to review your *entire* estate plan, including the beneficiary designations for your life insurance policy and your retirement, investment, and bank accounts, as well as your powers of attorney for healthcare and financial matters. Getting married or divorced does not necessarily mean that these designations are automatically cancelled or changed.

If you remarry, after a divorce or the death of a spouse, and you and/or your new spouse have children from a prior marriage or relationship, working with an estate planning attorney is essential to navigating the complexities of blended families.

Birth or Adoption of a New Child or Grandchild

Welcoming a new child or grandchild into your family is not only a joyous occasion, it is also a time to update your estate plan. If you are the proud parent, you will want to take these steps:

- First, make sure that your will nominates a guardian for your child. This is a crucial estate planning step, because your will is the only way you can communicate this wish to the probate court. If you skip this step, and you and your spouse pass away before your child reaches adulthood, you will not have a say in who becomes your child's guardian. Instead, a probate judge will have to make this crucial decision without valuable guidance from you.
- Second, make sure that your estate plan includes your child as a beneficiary and specifies what portion of your estate you desire him or her to inherit. You'll also want to specify when and in what manner your child inherits from you.
- Third, if your child has special needs, make sure your estate plan is drafted so that the assets you leave to him or her do not jeopardize access to public benefits such as Medicaid.

If the new bundle of joy is your grandchild, updating your estate plan is likely a little easier. In most cases, you'll simply need to decide whether to add your grandchild as a beneficiary, and decide what portion of your estate your grandchild will inherit.

Financial Changes

Your financial outlook today might be very different than it was when you first created your estate plan. This may be particularly true if your initial estate plan was a "basic" plan, created when you were just starting your family. If years have gone by and your children have grown into teenagers or young adults, your assets may have grown significantly as well. This may also be true if you received an inheritance.

A growth in asset values can call for a number of changes to your estate plan, including the incorporation of additional planning techniques. Your old, basic plan may not be enough. This is particularly true if you are concerned about tax planning, want to use your estate plan to give to charity, or want to change the way in which your assets are distributed to your beneficiaries.

Even if your overall net worth has not changed significantly, the sale or purchase of a major asset, such as real estate, can call for a meeting with your estate planning attorney – particularly if you have a Living Trust. It is easy to make the mistake of not properly titling your assets into your trust. Refinancing real estate can also affect the correct titling of property. Your estate planning attorney can help you determine which of your assets belong in your trust, and which do not.

INCREASED HOME VALUES

When it comes to estate planning, people tend to underestimate the significance of their family's home. Often, this is one of the family's largest assets. Consider this scenario:

> *Bob and Mary bought their home thirty years ago, when their two children were in elementary school. At that time, the house was worth $150,000. They also owned about $150,000 worth of stock in the company Bob worked for. The couple created an estate plan that left the house to their son and the stock to their daughter. At the time, this was an equal division of the couple's two major assets.*
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> *Thirty years later, however, the family home has grown significantly in value. It is now worth $750,000. The stock value has not fared quite as well. It is worth about $250,000. If Bob and Mary do not review their estate plan, their son stands to inherit substantially more than his sister… not the outcome the couple had intended.*

An estate plan review doesn't simply help you think about how your home factors into your plans for distributing your estate. It can also help you keep tabs on how your home's value affects your need for tax planning. A substantial increase in the value of your home has the potential to push your estate from non-taxable status to taxable status. Your estate planning attorney can help you minimize the amount of estate tax you are required to pay, while helping you keep an eye on the terms of your plan to ensure that it continues to accomplish your goals for your family.

PURCHASING A BUSINESS

Buying a business changes your net worth, so it raises tax planning concerns that you'll want to address with your estate planning attorney. However, as a new business owner, you'll have additional estate planning concerns as well.

What should happen in the event of your death or disability? Do you want your business to be sold? Do you want a family member to take over? What steps should your family take to implement your wishes?

When you update your estate plan to include a business succession plan, you accomplish a number of things:

- You clarify your wishes for your business while you are alive and well, sparing your family the need to guess at your wishes in your absence

- You help your family avoid potential conflict
- You help to ensure that your wishes for your business will be followed in the event of your death or disability
- You bolster your business, giving your enterprise a chance to continue its growth even after you are gone

Your estate planning attorney can help you think through the issues your family is likely to face, and make sure your plan effectively addresses all your concerns.

Moving to a New State

The laws that govern how your estate planning documents must be signed and structured, as well as what they should include, vary from state to state. In addition to this, each state has its own tax laws. For example, your new state might impose an estate or inheritance tax while your old state did not. This may now require some estate tax planning in your new state.

You'll want to meet with an experienced estate planning attorney, licensed in your new state, to make sure your existing estate plan complies with all the requirements of your new state. He or she can also recommend changes to your plan that will ensure it is as effective as possible, given the unique laws and requirements of your new state of residence.

CHANGES IN YOUR BENEFICIARIES' LIVES

Just as changes in your life can require changes to your estate plan, changes in the lives of your children, grandchildren, or other beneficiaries can also impact the effectiveness of your plan.

Marriage or Divorce

The marriage or divorce of a child or grandchild is a smart time for you to pull out your estate plan for a review. While their marriage marks a happy and joyous new milestone in your life and theirs, it is also prudent to plan for the possibility of their marriage ending in divorce at some point in the future. It's no secret that our divorce rate is one of the highest in the world[1] and a huge number of Americans have been divorced and remarried several times. Therefore, it may be wise to update your estate plan to include provisions to ensure that a sizeable portion of the inheritance you intend to leave to your child or grandchild does not walk away with, or become subject to claims by, a future ex-in-law.

Equally important, if your child or grandchild is getting divorced and you named the former spouse as a beneficiary in your will or trust, or as a beneficiary of an insurance policy or other financial asset, you might want to change that designation.

[1] http://www.telegraph.co.uk/travel/maps-and-graphics/mapped-countries-with-highest-divorce-rate/ (2017)

FINANCIAL CHANGES

Just as your financial outlook may have changed over the years, so may the financial pictures of your children or grandchildren. For example:

> *You might have initially planned to leave a sizable inheritance directly to your grandson who, over time, has proven himself to be less than wise with money. You can change the terms of your estate plan to leave your grandson his inheritance in trust, so that it is protected and preserved. That way, he will be able to rely on it for his long-term needs.*
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> *You may also want to change the terms of your estate plan to match the financial needs of children who have differing levels of financial stability. For example, your estate plan might have initially divided your assets equally between your daughter and your son. However, after college, your daughter might have chosen a career in medicine, leaving her financially stable, while your son might have chosen missionary work, leaving him less secure financially. Keeping in mind the potential emotional impact, you might still want to change your plan to leave more assets to your son, because you believe he needs more financial support from you.*

HEALTH CONCERNS

If you have a child or grandchild who is born – or becomes – disabled, it is essential that you change your estate plan to include effective special needs planning provisions. With the right provisions, you can secure the child's inheritance without disqualifying him or her from receiving government assistance like Medicaid or Supplemental Security Income (SSI).

DEATH

As unexpected as it may be, sometimes one of the people you've named as a beneficiary passes away before you do. When this happens, you need to update your estate plan to clarify what should happen to that beneficiary's inheritance.

CHANGES IN YOUR FIDUCIARIES' LIVES

Part of creating your estate plan is naming fiduciaries to help carry out your wishes in the event of your disability or death. For example:

- Your executor is responsible for ensuring that your will is effectively probated after your death
- Your successor trustee is responsible for administering your trust in case of your death or disability
- Your agent, or Attorney-in-Fact, is responsible for acting on your behalf under the terms of your Power of Attorney

Careful thought goes into selecting fiduciaries when you first create your estate plan. However, your fiduciary designations are not set in stone. Sometimes, changes in the lives of your fiduciaries require you to reconsider your estate plan and name someone new to fulfill these important roles.

Death or Disability

If the person you've named to serve as your executor, successor trustee, agent, or as any type of fiduciary under your estate plan, dies or becomes disabled, you'll want to change your plan to name a replacement fiduciary. Just as you did when you named the original fiduciary, think carefully and choose someone whom you trust and who is well-suited to the task to be carried out.

Also, keep in mind that serving as a fiduciary is a big responsibility. Talk to the person you've chosen before you make any official changes to your estate plan, just to make sure he or she is willing to take on this important role.

Relocation

What happens when you've named a fiduciary in your estate plan and that person moves away? Do you always have to change your estate plan when your fiduciary moves? Not necessarily, but you'll want to talk to your estate planning attorney about the situation.

For example, if you've named your sister to make emergency medical decisions for you under your Power of Attorney for Healthcare, and she moves across the country, you might want to choose a new agent. In an emergency, it would be difficult for your sister to get to you quickly enough – or to gather enough information from her remote location – to make effective decisions on your behalf.

On the other hand, if you've named your daughter to serve as your successor trustee, and she moves to a new home two hours away, you might not need to change your trust.

It's always a good idea to talk through these circumstances with your estate planning attorney, just to make sure you're not overlooking any crucial information.

CHANGES IN YOUR WISHES

Sometimes, even if nothing has changed in your life or the lives of those around you, you might simply change your mind. As we grow older, we learn from our own experiences and from the experiences of those around us.

These experiences can have an impact on the kind of legacy we want to leave behind. For example, you might be happily married to your high school sweetheart, with plans to grow old

and die together. You and your spouse might have four adult children who are in happy marriages, too.

But after you watch a close friend go through a messy divorce, you may be more inclined to leave your children's inheritances in a trust that provides lasting protection, just in case they have the misfortune to experience a divorce in the future.

CHANGES IN THE LAW

In the rare event that nothing changes in your life or the lives of your loved ones, and that your wishes don't change and evolve over time, there's still something you'll want to watch out for. The laws that affect your estate plan can change at an alarming rate.

The federal tax code is not the only law that can have a potential impact on your estate plan. There are other federal laws, as well as state laws, that can have an impact on how effective your plan is – or on whether provisions in your plan even remain valid.

Year after year, state and federal legislators are hard at work adding new laws as well as changing and repealing existing ones. If you think it's too much to keep up with, don't worry. That's what estate planning attorneys do.

TAX CHANGES

In recent years, changes to federal estate and gift tax laws have been front-page news. The amount each individual is allowed to transfer, tax-free, at death has changed on a relatively frequent basis. The same is true for the amount each individual is allowed to give away each year without having to worry about federal gift taxes.

A number of states collect estate and inheritance taxes in addition to federal estate taxes. These state-level laws can be complicated, and they are just as likely to change.

Your estate planning attorney can help you assess how current tax laws could affect your estate. He or she can also show you options for minimizing your tax liability and ensuring that your plan is as flexible as possible in anticipation of future changes in the law.

Even with a flexible plan, it is essential that you meet with your estate planning attorney on a regular basis to review your plan, discuss changes in the law, and make sure that your plan includes the most current strategies for accomplishing your tax and estate planning goals.

NON-TAX CHANGES

With tax laws receiving such attention, it is easy for other legal changes that affect your estate plan to go unnoticed. However, laws are frequently passed at both the federal and state level that have an impact on the effectiveness of your estate plan.

For example:

- There may be new planning considerations to minimize the impact of the taxes included in the Affordable Care Act
- Your trust may not take advantage of changes regarding retirement plan distributions. These changes allow for stretching payouts (and payment of income tax) on retirement distributions

If you do not visit your attorney for regular estate plan reviews, you might miss out on opportunities to update your plan to take advantage of new planning techniques that would make it easier for your loved ones to implement your wishes after you are gone.

MEDICAID PLANNING

One advantage of regular estate planning reviews is the chance to talk to your attorney about Medicaid planning concerns. If you are worried about the possibility of losing your home and other assets to nursing home and long-term care expenses, you and your attorney should discuss Medicaid planning long before you or your spouse need a nursing home.

We all know that long-term care, such as a nursing home or an assisted living facility, is expensive with a national average of $100,375[2] per year. It is not something most people can afford to pay for out of pocket – at least, not for long.

For people who do not have long-term care insurance, nursing home care can quickly become a drain on a lifetime's worth of savings. Unfortunately, many people believe that they have to cover the nursing home bills until they are near poverty before they can apply for Medicaid assistance.

The good news is, this is not true. If you have planned ahead and worked with an experienced attorney to establish a Medicaid plan, you can work within federal and state guidelines to shield a portion (and sometimes all) of your assets while qualifying for Medicaid coverage of your long-term care costs.

Planning far in advance is key. Federal law imposes a five-year "look-back" period for certain property transfers. Because of this, if you have not begun planning well ahead of your need for nursing home care, certain strategies may not be available to you.

[2] https://www.genworth.com/aging-and-you/finances/cost-of-care.html (2018)

YOUR ESTATE PLANNING ATTORNEY: A LIFELONG PARTNER

Making sure your estate plan continues to reflect your wishes and your family's needs throughout the twists and turns of life is not a do-it-yourself job. It requires the expert help of an attorney who concentrates his or her practice on estate planning.

As long as you and your loved ones have not had any changes in your personal lives, all you need to worry about is scheduling an appointment for an estate plan review every two years. This way, your estate planning attorney can make sure your plan is updated to keep pace with legal changes and new planning strategies.

Consider your estate planning attorney a lifelong partner, counselor, and consultant. One who will get to know you and your family and will share valuable knowledge and advice as your family grows and changes.

With this in mind, it is important that you think of an attorney's legal expertise as just a starting point. Of course, you want to work with an experienced estate planning attorney. But beyond that, look for an attorney who is a good listener, who answers your questions in an understandable way, and with whom you and your family feel comfortable and at home.

DOES YOUR ESTATE PLAN NEED A CHECK-UP?

If you answer "YES" to any of these questions, it is a good idea to schedule a review appointment. Please contact our office to schedule your complimentary review appointment and ensure that your estate plan continues to provide protection for you, your family, and your assets.

	YES	NO
Has it been more than two years since you reviewed your current estate plan?		
If you have minor children, does your estate plan name guardians for them?		
Since creating your estate plan, have your children become adults?		
If you have a trust, are there any assets you have not transferred into your trust?		
Is your Power of Attorney document for financial decisions older than 5 years?		
Is your Power of Attorney document for health care decisions older than 5 years?		
Are there any charitable gifts you would like to make at your death that are not clearly set forth in your estate plan?		
Is there any personal property you would like to distribute that has not been provided for in your estate plan?		
Does your estate plan include provisions for the care of your pets in the event of your death or disability?		

Has the value of your assets changed significantly since you last updated your estate plan?		
Have you added or changed the kinds of assets you own since you last updated your estate plan?		
Have you gotten married or been divorced or widowed since you last updated your estate plan?		
Have you had children or grandchildren since you last updated your estate plan?		
Have any of your children gotten married, divorced, or died since you last updated your estate plan?		
Have you, your spouse, or a child become mentally or physically incapacitated since you last updated your estate plan?		
Have you bought or sold a house or other piece of property since you last updated your estate plan?		
Are you considering selling stock or other valuable assets which carry a low cost basis?		
Have you or any of your fiduciaries moved between states since your planning documents were signed?		
Since creating your estate plan, do you have new concerns about the possibility of losing your assets to nursing home or other long-term care expenses?		
Since you last updated your estate plan, have you changed your mind about any aspect of the plan?		
Have you or your spouse received an inheritance?		

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.

The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine, Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.