

Do you need to update your estate plan?

A practical checklist

Don't wait until it's too late

Estate planning documents and beneficiary designations should be updated regularly; however, it's human nature to put this off. It's easier to assume that "nothing will happen, so I can do this later." But if death or disability does occur and you haven't made the necessary changes to account for a recent marriage, divorce, or other event, serious negative effects could follow.

Is it time to update your estate plan? This checklist provides examples of life events that could lead you to review or change your estate planning documents and/or beneficiary designations. The fact that you have experienced one of these changes does not always require an amendment or change. But at a minimum, it is a good idea to have a brief conversation with your attorney to keep him or her apprised of your situation. Your attorney can help you determine whether any updates are appropriate.

Have you:

- Married, remarried, or experienced another significant relationship change?
- Entered into a civil union or registered domestic partnership, or dissolved one?
- Divorced?
- Welcomed a new child or children?
- Welcomed new grandchildren?
- Experienced changes in your health? Your spouse's or partner's health?
- Retired?
- Moved to a different state? Changed your principal residence?
- Acquired real estate outside of the state where you reside?
- Received an inheritance or become the current beneficiary of a trust?
- Experienced meaningful changes to your income or financial condition for any reason, including a career change, job loss, or simply the change in value of assets over time?

Were your will, trusts, or other key documents executed before these key dates?

If so, consider reviewing your documents with your attorney for potential updates.

December 20, 2019	
Enactment of the "SECURE Act" of 2019	<ul style="list-style-type: none">• This law repealed the opportunity to "stretch" distributions from IRAs and defined contribution plans for most non-spouse beneficiaries. Instead, a 10-year payout rule will apply.• If you have named a trust as beneficiary of an IRA or 401k plan, that strategy may no longer work as anticipated. Required distributions will occur faster than intended. Trust terms may require that those assets be distributed out to the beneficiary sooner than planned. Income tax consequences to the trust and its beneficiaries may be impacted as distributions are accelerated.
December 22, 2017	
Enactment of the "Tax Cuts and Jobs Act" of 2017	<ul style="list-style-type: none">• The law essentially doubled the "basic exclusion," now at \$11,580,000 (2020) per person, inflation adjusted, through 2025.• Many existing estate plans for married couples were designed back when the exclusion was much smaller—say \$2 million, \$1 million, or even \$600,000. These older plans often call for automatic, maximum funding of a "credit shelter" trust at the first spouse's death.• These older documents will frequently result in "over-funding" a credit shelter trust at the first spouse's death. That could result in less-than-optimal use of the deceased spouse's exclusion and sacrifice the opportunity for a "step-up" in cost basis at the surviving spouse's death.
January 2, 2013	
Enactment of the American Taxpayer Relief Act of 2012 (ATRA)	<ul style="list-style-type: none">• ATRA made the "portability election" a permanent and important feature of federal estate tax planning. This special tax election allows an executor to transfer a deceased spouse's unused federal estate tax exclusion to a surviving spouse.• If your estate plan was created before this date, it may have been designed without considering this potentially valuable election.
December 17, 2010	
Enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010	<ul style="list-style-type: none">• This Act increased the federal estate tax "applicable exclusion" to \$5 million for 2010, and provided that the exclusion would be indexed for inflation in future years. Before 2010, the threshold for federal estate taxes was much lower.
January 1, 2005	
Effective date for state tax credit changes resulting from the Economic Growth and Tax Relief Act of 2001	<ul style="list-style-type: none">• Before 2001, there was a 100% federal credit for death taxes imposed by a state. That credit was phased out between 2002 and 2004, and replaced with a deduction.• Beginning in 2005, state estate or inheritance taxes apply in addition to federal estate tax.• This can be important if you live in a state that imposes its own estate or inheritance tax. Estate plans created before 2005 may not properly plan for the impact of these taxes.

April 14, 2003

Compliance date for privacy rule under the Health Insurance Portability and Accountability Act (HIPAA)

- HIPAA imposed new restrictions on access to private medical information.
- If your power of attorney, health care directive, or revocable trust was created before this date, your agent or trustee could have difficulty dealing with doctors, hospitals, or insurance companies because your documents may not include the very specific authorization language required by the HIPAA Privacy Rule.

Have there been changes to your family or personal situation?

- Were your current documents prepared before you had children or when your children were much younger?
- Have your children or grandchildren married or divorced?
- Do you have beneficiaries with physical or mental health issues who would benefit from planning to address special needs or preserve their eligibility for government benefits?
- Have you changed your thinking about beneficiaries or about when, how, or how much they should receive?
- Would you like to add, change, or delete charitable beneficiaries or change the amount of your bequest to charity?

Would you like to make any changes to the persons you designated as:

- Executor (personal representative) under your will?
- Successor trustee under your trust?
- Guardian for minor children?
- Agent to make financial or legal decisions for you under a durable power of attorney?
- Agent to make medical decisions for you under a health care durable power of attorney?

If you are a business owner, have you:

- Added new co-owners?
- Sold your business or contemplated a sale or transfer of ownership?
- Created or modified a buy-sell agreement?

Have you talked with your attorney and CPA to determine if your estate plan is affected by any recent changes to:

- Federal estate tax law?
- State estate tax law?
- Other state laws that affect your property, personal situation, or estate planning documents?

When was the last time you reviewed beneficiary designations for:

- Life insurance?
- Annuities?
- Transfer on death (TOD) or pay on death (POD) accounts?
- IRAs?
- Retirement plans, such as 401(k), profit sharing, pension, etc.?
- Executive benefits, such as deferred compensation plans, restricted stock, or employer-granted stock options?

Review asset titling with your attorney to determine whether it is consistent with your overall estate plan.

- Are assets titled in your individual name?
- In the name of your revocable trust?
- Talk to your attorney about the implications of:
 - Joint tenancy with right of survivorship
 - Tenancy by the entirety
 - Tenants in common
 - Community property with right of survivorship

Be aware of the potential for elder financial abuse if you or an aging parent ...

- Runs out of money at the end of the month.
- Is uncomfortable paying bills, or becomes confused.
- Feel uneasy about making important financial decisions alone.
- Regrets or worries about financial decisions you have made.

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Any estate plan should be reviewed by an attorney who specializes in estate planning and is licensed to practice law in your state.

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