



Is It Time to Update Your Estate Planning?

BY LAUREN DAVIES

An estate plan allows a person to direct where their assets go on their death—having your estate planning in order allows your voice and your wishes to be heard. If you die without an estate plan, your wishes may not be realized. Different states have different statutes that contain default provisions for where a person's assets go if they do not have a Last Will and Testament—and these laws may or may not be in accordance with your wishes.

Don't Leave Your Legacy to Chance

As you go through life's many changes, it is critical to make sure your estate planning is updated to ensure your wishes are followed. Some examples of life changes that merit considering an update to your estate plan include the birth of a child, marriage, divorce, loss of a loved one, moving from one state to another or a change in financial circumstances. Generally speaking, it is prudent to review your estate planning documents every year or two even if you have not experienced any major change in circumstances. If you have an estate plan and you don't understand what's in it, you can have an attorney review it and give you a summary of the documents. If you don't have an estate plan, you can make one – with or without your spouse if you have one. Representation by an attorney can be just for one spouse or it can be joint where information is shared with both spouses.

Anatomy of an Estate Plan

Last Will and Testament

A Last Will and Testament is the document that formally states in a binding way where your assets will go after you pass and, where appropriate, names guardians for minor

children. It also names the executor (or personal representative in some states) of your estate. The executor is the person or people who are responsible for carrying out the wishes of the deceased person and administering the estate in accordance with the laws of the state in which you lived.

If you have minor children, you will want to consider who should be their guardian or guardians and who should act as trustee of the assets you leave for the benefit of your children. The guardians and trustees can be the same people or different people depending on what is the best fit for your family.

Advance Health Care Directives

Advance Health Care Directives name who you would like to make medical decisions for you if you are unable to make them yourself. If your existing Advance Health Care Directives name your ex-spouse, they should be updated to name a close friend or relative whom you trust in this position.

Depending on where you live, Advance Health Care Directives may also state your preferences regarding organ donation, who may access your confidential health information and contain a living will. A living will, if you include one, is a binding statement about your end-of-life care preferences and may contain your specific wishes to be given (or have withheld) particular types of care (e.g., artificial respiration, nutrition, hydration). If you have particular preferences regarding the custody and control of your remains, you may include your wishes in this regard in a non-binding way in your Advance Health Care Directive. Even if you do not have strong preferences in this regard, it can provide comfort to your loved ones to know they are acting in accordance with your preferences.

Power of Attorney

A power of attorney names a person or people who you choose to speak for you financially, as your agent, during your life. If you have a power of attorney in favor of your ex-spouse, it is important to revoke it so it cannot be used by your ex-spouse in the future. The powers are broad and sweeping so it is important to name a person (or people) whom you trust.

Trusts

Some plans also include a trust or multiple trusts to accomplish a person or family's wishes. Trusts are useful tools for a wide variety of situations. A few examples of circumstances where a trust or trusts may be helpful are: (1) keeping control of how your assets are used after your death or disability; (2) minimizing estate taxes; (3) creating a framework of rules for your bequest to your beneficiary (this is useful for many reasons including, for example, minor beneficiaries, disabled beneficiaries, beneficiaries who are not financially responsible, have mental health or addiction challenges and more); (4) as a way to leave assets to your current spouse but ensure that any remaining assets pass to your children from your previous relationship; and (5) to protect your bequest from your beneficiary's future potential creditors, including their spouse.

Planning After Separation

After a separation but before the divorce has been finalized, there are state specific rules that govern the changes you may make that will need to be honored.

Speak with your family law attorney or consult an estate planning attorney in your state to find out what documents can be updated during this period. Transferring assets or changing beneficiary designations may not be allowed, however, updating the names of the people you want to make decisions for you if you cannot make them yourself (for example your health care representative and power of attorney) may be possible.

Planning After Divorce

After your divorce has been finalized, it's important to update your estate plan. If your existing estate planning arrangements are in favor of your former spouse, now is the time to update it in accordance with your current wishes (and any obligations in your divorce agreement) to ensure that your ex-spouse does not inadvertently inherit your assets. Different states have different rules about the effect of divorce on estate planning documents that should be considered.

Beneficiary Designations

Often overlooked, beneficiary designations relate to assets such as life insurance, retirement benefits and other assets

where you may designate in a binding way where that asset will go when you die. As part of updating your estate planning arrangements (especially after divorce), reviewing and updating your beneficiary designations is critical to ensure that your assets will pass in accordance with your current wishes. Updating your Will alone is not enough—assets with beneficiary designations on them will pass to the beneficiaries named in those designations even if they contain outdated or incorrect information. Different states have different rules regarding the effect of divorce on beneficiary designations—it is best not to leave the result to chance and ensure that your assets will go in accordance with your wishes on your death.

Special Considerations for Children

Estate planning for children requires careful consideration. Due to their age and rules that govern distribution of assets to minors, trusts are often used to plan for children's needs as they allow assets to be left for children but give a trusted adult (the trustee) control over the decision making. Trusts for children can run to a specific age or ages or be for the lifetime of a child. If you have a blended family, step-children, adopted children, children from a prior relationship, etc., it is critical that your estate planning documents accurately reflect your wishes and properly include (or exclude) children who do not fall within your state's definition of issue. This is of particular importance as several states have adopted the Uniform Parentage Act that expands the definition of children and issue to include many different types of parent/child relationships. Additionally, it is important to ensure that your estate planning documents include all of your children or specify that children born after the date of the Will and/or Trust are specifically included.

Lastly, as your children become grown or their needs have changed, you may wish to update the arrangements you have made for them in your estate planning documents. **FA**



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