

Is Your Estate Plan Broken? When and Why You Should Review Your Estate Plan

Clients should personally review their estate plan every *two years* and have an attorney review them every *five years* or whenever they experience a major life-event.

There are two reasons why. First, major life-events can affect your existing estate plan. Secondly, the laws change and generally citizens are unaware of these changes and how these changes will personally affect their estate plan.

1. Major Life Events

Any major life-event should trigger a review of your estate plan by an attorney. These life events may include *deaths, births, marriages, remarriages, divorce, inheritance, a new business interest, or a change in health.*

- **Death of a loved one.** If your loved one was named in your estate plan, you should review your plans to see what happens now. You may need to update your plans to name a new beneficiary or if minor children might inherit, you may need to set up a testamentary trust for them or name a conservator to manage their funds.
- **Divorce.** A divorce is cause for a major estate plan update! A divorce causes your ex-spouse to be treated as if they predeceased you for purposes of distribution of your estate. Post-divorce, you will also need to update your beneficiary designations on non-probate assets.
- **Marriage.** When you marry, it is important to consider how your estate plan will affect your new spouse and any children you may have from this marriage or a previous relationship. If you made your will before your marriage and did not update it to include your spouse, he or she will not benefit from your estate unless they go through a process referred to as “electing against the will.” Through this process, your spouse can receive a portion of your estate. In the case of a blended family, planning is especially important in order to make sure all of your loved ones are provided for in the way you desire. Early planning and discussions can help keep family squabbles at bay.

- **Additions to your assets.** If you acquire significant assets, such as a large inheritance or acquire a business, after your estate plan was first drawn up, you may need to use some additional planning methods. For business owners, business succession planning is part of your estate plan!
- **Changes in health.** Changes in your health or the health of your spouse or child may necessitate revising your plan. If you or your spouse will need long-term care, it may be wise to realign ownership of your assets under the supervision of an Elder Law Attorney. Additionally, if you have a disabled spouse or child, there are proper ways to make sure they are cared for without disrupting government benefits to which they are entitled.

2. Changes in the Law

Changes to the law are made every year, but you may not hear about them. Attorneys are obligated to keep up-to-date on the changes. Here are a couple of items you should know about.

- **Estate Tax.** For estate plans drafted before 2012, the American Taxpayer Relief Act of 2012 (ACTRA) drastically changed how you should view estate planning. The act unified the estate gift, and generation-skipping transfer tax exclusions amounts. In 2022, the exempt amount is *\$12.06 million* (or *\$24.12 million* for a couple). The exemption amount is adjusted annually for inflation. This is a huge difference from the exemption amounts in previous decades.
- **Capital Gains Tax.** Due to the large estate tax exclusions, the focus of estate planning for most clients has shifted from minimizing estate taxes to planning how to increase the step-up in basis for estate beneficiaries. Today's risk of wealth loss is the imposition of capital gains tax on the sale of assets after death.
- **Trust Code.** Finally, Kentucky enacted the Uniform Trust Code in 2014. These provisions create new ways for Kentucky trusts to be modified and terminated. The provisions further specify the responsibilities and duties of the Trustees. These provisions apply to most trusts currently in existence.
- **Uniform Power of Attorney Act.** Kentucky adopted the Uniform Power of attorney act in 2018 and revised the statutes substantially again in 2020. Powers-of-attorney drafted before then, should definitely be reviewed by an Elder Law Attorney.

Everyone needs to be aware of life changes and remain flexible in addressing them. An estate plan is not one-size-fits-all. Your attorney is uniquely qualified to tell you what estate planning techniques are right for you, your family, and your specific situation.

These materials are for general informational purposes only. Consult an attorney for legal advice about estate planning.

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