

# Three reasons why periodic reviews of estate planning documents are important.

By Eva Stark, JD, LL.M.



One thing people seem to have in common is a tendency to underestimate how much time has passed since they've done important tasks like see their dentist or replace the batteries in their smoke alarms.

The same can be said for updating legal and financial documents. Many people think that once they've established estate plans and written their wills, they are in good shape.

Estate planning practitioners know better, however, and likely come across situations like this on a regular basis:

A couple has 20-year-old wills that they believe are probably "fine." They decide to see their professional advisors at the urging of some friends

who recently had a death in the family. The couple have two children, a son and a daughter, whom they would like to treat equally in their estate plan. The daughter lives near the clients and helps them daily—she even accompanies them to doctors' appointments. The clients share that their son, unfortunately, is suffering from alcohol and gambling addictions and they would like to ensure that his inheritance is used wisely for his treatment and support.

When the attorney reviews their wills, the clients are shocked: the documents were drafted to leave everything to the son outright and disinherit the daughter!

The son is even named the executor of their estates!

The clients recall that when the documents were drafted, the son was well into a successful career while the daughter was estranged from the clients and had not spoken to them in years.

## Circumstances and goals may change

As the scenario above illustrates, circumstances and goals often change—sometimes over an extended period, sometimes suddenly. When a change occurs, it is generally prudent to review the client's estate plan. Changes where a review is generally beneficial include:

- Birth or adoption of a child;
- Marriage;

- Divorce;
- Death of a spouse or a beneficiary;
- Incapacity or disability of a family member;
- Changes in net worth or assets owned;
- Relocation to a new state; or
- Changes in client goals and objectives.

## Named fiduciaries may no longer be appropriate

Wills, trusts, durable powers of attorney, health care proxies and other documents all name fiduciaries such as the executor, trustee, attorney-in-fact, or agent. These individuals have tremendous powers over the clients' property, financial affairs, medical treatment, and aspects of their estate plan or life. Persons chosen for these roles are typically trusted family members, friends, or professionals who, at the time of selection, possess the right characteristics and skillset.

Over time, of course, circumstances change. Individuals may pass away, lose competency, or simply may no longer be the person the client would choose to serve in that role.

## Laws may change, causing existing documents to operate in unintended ways

Changes in laws, including tax laws, may cause an estate plan to operate in an unexpected manner.

For example, The Tax Cuts and Jobs Act of 2017 doubled the federal estate tax exemption amount, adjusted for inflation (the amount in 2021 is \$11,700,000 per spouse). As a result, estate plans which funded a "Bypass Trust" with the decedent's federal estate tax exemption amount could see "over funding" of the Bypass Trust as compared to the amount that was expected to pass to the trust at the time of drafting.

For some clients, the impact may be insignificant. For others, the change

could unnecessarily increase income taxes on the next generation, change the proportion of assets that may be available to the surviving spouse versus descendants, or result in numerous other unanticipated outcomes depending on the specific language used in the documents and the client's particular circumstances.

## The rule of thumb

Due to the many changes that may occur, either as a result of changing client circumstances or a changing legal or tax environment, many practitioners recommend that estate plans should be reviewed every three to five years at a minimum.

For certain clients, more frequent reviews may be beneficial, especially in the event of a significant change in tax laws.

Astute financial professionals are alert to these changes and routinely encourage their clients to review and update their estate plans in a timely manner, knowing that is the best way to avoid unintended outcomes.



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