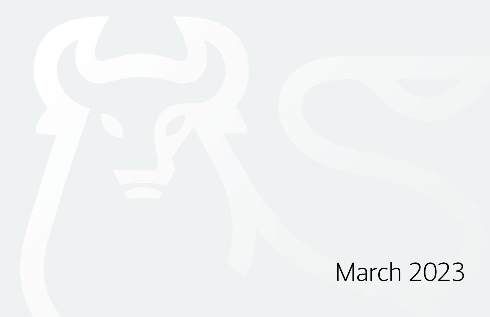
CHIEF INVESTMENT OFFICE

Wealth Strategy Report



How Often Should Estate Planning Documents Be Reviewed?

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INTRODUCTION

Once an estate document, such as a will or trust, is signed, it is often carefully laid to rest in a safe deposit box or file drawer and forgotten. More often than not, these documents only resurface when a party dies or conflict arises.

You should review your estate planning documents periodically. A good rule of thumb is to review your estate planning documents every few years, to make sure they have not become outdated for any of the several reasons listed below. In addition to a regular review every few years, if there is a meaningful change in family, financial, or tax circumstances sooner, you should review your documents then.

HOW YOUR ESTATE PLAN CAN BECOME OUTDATED

A useful definition of estate planning is: (1) having your assets (2) go to the people you want to receive the assets (3) in the manner you want (i.e., in trust or outright) (4) with minimum taxes. Any one of these four elements might change over time, rendering your estate plan out-of-date.

Your assets change

Change in size. Your estate plan can become outdated because your assets change over time. This can be the result of growth over time, an IPO, or an inheritance, to name a few reasons. With increased wealth, you might re-think where that wealth should go. Increased wealth can also make tax planning much more important than before. A significant decrease can have the opposite effect — elements of your estate plan that were done for tax-saving reasons might now have unwanted results. Closely held business interests raise special estate planning issues that need to be thought through carefully. An increase in your ownership in a closely held business might require further planning (or might allow for some simpler planning in the case of a decrease).

Change of “location.” Your planned disposition of assets may also change as a result of the “relocation” of assets (e.g., re-titling and otherwise changing the manner in which assets are owned), which can change the way assets pass. The many ways assets can pass at death include (i) under your Will (for probate assets); (ii) to a surviving joint owner; (iii) by beneficiary designation; (iv) by contract (e.g., a POD account); and (v) by the terms of a trust if the asset is held in trust. We have a separate Wealth Strategy Report: Understanding How Your Assets Will Pass at Death.

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Because of these many different ways an asset can pass at your death, if an asset relocates, that can subject that asset to a new disposition that might not be what you originally intended. For example, a stock portfolio that was in your own name (and therefore would pass under your Will) might be re-titled into a joint account with rights of survivorship, in which case it would pass to the joint owner at your death, regardless of what your Will states. As another example, assets in your IRA will pass pursuant to the person named in your beneficiary designation form. However, if you withdraw your Required Minimum Distribution from the IRA and deposit it into your investment account, it would then pass under your Will, which could produce a different result.

Your desired beneficiaries change

The second element in our definition of "estate planning" is identifying the proper recipients, which can change over time for many reasons. The most common reason is because families change. Marriage can cause you to now engage in marital trust planning. Divorce can render marital planning inappropriate. The advent of children will require the naming of guardians and trust planning. The advent of grandchildren can require generation-skipping transfer ("GST") tax planning. An unnatural order of deaths can change your estate desires. For all these reasons and more, your family members whom you want to receive your wealth can change.

Another reason your intended beneficiaries can change is because your charitable interests can change. As your assets grow, you might want to include charitable bequests in your estate plan.

The need for trusts changes

The third element in our definition of "estate planning" is determining whether a trust is needed. This can change over time. You might have initially wanted a beneficiary's inheritance to be held in trust, but now a trust might not be needed either because the beneficiary is older and mature, or perhaps because the dollars involved are now too little to merit a trust. The reverse could also be true — you might not have thought a trust was needed before but now the beneficiary has proven to be a spendthrift. Or perhaps asset protection is more of a concern, for example if the beneficiary is in a profession prone to lawsuits.

You might also need to rethink your choice of trustee, due to death or simply a change in relationships. (The same is true for your choice of executor.)

Taxes change. The final element in our definition of "estate planning" is to reduce taxes. The tax laws can change frequently, making this a moving target. Recent history has shown that estate tax law can be unpredictable, both for the amount of exemption and the tax rate. The income tax is also quite uncertain. This uncertainty is an important consideration because an important feature of estate planning is to balance estate tax benefits against the income tax step-up in basis. That step-up in basis, though seemingly more certain now, has also been unpredictable in recent years.

ADDITIONAL REASONS TO UPDATE

The following don't fit neatly into the 4-part definition of estate planning used above. Nevertheless, any one these might require the updating of legal documents right away rather than awaiting a periodic review.

Change in health of you or family member

A change in health can give one pause to review your estate plan. If your health changes, you might want to review whom you name as financial power of attorney and/or health care power of attorney. You might also want to assess your Living Will (or lack thereof). If the health of a family member changes, you might want to review how your estate plan for that family member might now be changed.

Change in insurability for life insurance

Life insurance is often an important component of an estate plan, for many different reasons. If that component becomes unavailable due to un-insurability, that can inflict unintended consequences on an estate plan relying on insurance.

Retirement

Retirement can trigger many changes that merit review. Retirement accounts might be changing (e.g., a retirement plan being transferred to an IRA), which can require new beneficiary designations. Payout elections might need to be thought through. Insurance coverage might need to be addressed.

Change in laws

This could be a change in tax law (federal or state), a change in property law, or a change in probate and trust law. Any of these changes can rearrange your estate plan. Furthermore, unlike the other matters listed above, this is change that you might not even be aware of. That is another reason why periodic reviews are important; because sometimes the reason for change does not announce itself!

A move to another state

At your death the law of your state of domicile will govern your probate estate. Each state's probate law can have quirks that need to be addressed, so moving to a new state should trigger a review of your documents. Similarly, if you acquire property in another state (e.g., a vacation home), dealing with another state's laws is a good reason to review your estate documents.

— National Wealth Strategies, Chief Investment Office

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