

When Is It Time To “Service” Your Estate Plan

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If you own a car, then you know it requires regular servicing in order to perform well and be reliable. More than likely, your car came with a recommended schedule for service, based on how many miles it has been driven. After a certain number of miles, you need to change the oil, replace the brake pads, rotate the tires, and so on.

If you have a newer car, you probably have an irritating dash light that comes on when it's time for service and stays on until the mechanic resets it. Either way, whether you pay attention to the odometer or rely on that dash light, it's pretty easy to know when it's time to service your car. And if you keep driving it without ever servicing it, it's a sure bet your car will eventually break down.

Like your car, your estate plan needs "servicing" if it is going to perform the way you want when you need it. Your estate plan is a snapshot of you, your family, your assets and the tax laws in effect at the time it was created. All of these change over time, and so should your plan. It is unreasonable to expect the simple will written when you were a newlywed to be effective now that you have a growing family, or now that you are divorced from your spouse, or now that you are retired and have an ever-increasing swarm of grandchildren! Over the course of your lifetime, your estate plan will need check-ups, maintenance, tweaking, maybe even replacing.

So, how do you know when it's time to give your estate plan a check-up? In this issue of **Thinking About Tomorrow** we examine some of the reasons to review your will and other estate planning documents. Instead of having mileage checkpoints, your estate plan has event checkpoints. Generally, any change in your personal, family, financial or health situation, or a change in the tax laws, could prompt a change in your estate plan. Like not maintaining your car, not servicing your estate plan may prove a costly mistake in the long run.

Major Change in Finances

A change in your financial status may require significant changes to your estate plan. With the economic downturn and recent stock market fluctuations, many homes have lost considerable value and stock portfolios have plummeted. If your will or estate plan divides your estate into percentages for beneficiaries, then changes in value may not affect how your estate is distributed. However, if you include specific bequests in your will, a fall or rise in your estate could have consequences.

For example, if your estate plan gives \$50,000 to your favorite charity and the rest of your estate to your children, a reduction in the value of your estate could mean your children won't get as much as you intended.

A change in value of assets could also affect your estate plan if you intended to treat your children equally by giving them assets of equal value. For example, suppose your will gives your house worth \$250,000 to your daughter and your stock worth \$250,000 to your son. If the value of either the house or the stock portfolio increases or decreases significantly in value, your children will no longer receive equal gifts.



If you win the lottery or receive an inheritance, you will need to reevaluate your plan to determine whether your estate is taxable for both state and federal purposes. It is likely you will want to revise your plan to minimize these taxes.

Marriage or Divorce

A change in your marital status requires significant changes to your estate plan. Pre-marriage documents often do not reflect your post-marriage intentions. Conversely, when a marriage ends, most people's objectives change. It is also important to update your estate plan if any of your beneficiaries (such as children) get married or divorced.

Although many states provide that a surviving spouse receive some assets of the deceased spouse where there is no will, your spouse may receive less than what you intend him or her to inherit. The amount the surviving spouse is entitled to differs depending on whether there are children of the marriage and, if there are no children, whether there are surviving parents or siblings of the deceased spouse.

Just because you have divorced does not mean that your former spouse is automatically disinherited. Most people do not want their ex-spouse to be a beneficiary, executor, trustee etc. They also do not want the ex-spouse or the ex-spouse's family to have control over assets that are left to your children or grandchildren. It is important to review beneficiary designations on any assets not passing through a will such as Life Insurance policies and Retirement Accounts. Jointly held assets should be re-titled.

Birth or Adoption of a Child or Grandchild

For many people their original will was likely written when they had no children or after the birth of their first child. If you or a beneficiary has had or adopted a child or grandchild since your will was drafted, you should review your plan to insure that the new child is included.

For example, if you have named children specifically in your will, you will need to make sure any children born after are included if you want those children to also share in the inheritance. You may also wish to name a guardian and set up a trust for the economic well being of your minor children. A trust can also be used to ensure those assets do not pass outright to a minor child, a beneficiary who has trouble with money, or in-laws. Children and grandchildren might receive nothing if they weren't alive when the will was created and the Court might have to pick a guardian for your minor children.

Death or Change of a Beneficiary or Fiduciary

As time passes, the people you named as beneficiary or fiduciary may no longer be appropriate choices. Especially if a beneficiary or fiduciary named in your estate plan has died (including a parent, sibling, child or spouse), then you should update your plan to remove that person's name and/or insure that replacements are appointed. It is important to also update any beneficiary designations. Often with aging parents or relatives, there may be an insurance policy, stock or other assets left to a pre-deceased spouse or other relative.

When your children reach the age of maturity, you may wish to change the way in which money or property is provided to them. You may also decide to name one or more of your adult children as your fiduciaries.

Sometimes you may just change your mind on how your assets will be distributed after your death. For example, you may want to add a charity that you have become involved with or reward a niece that has been providing care.

Change in Health, Disability or Illness

If you become physically or mentally incapacitated during your lifetime, who will take care of your personal and health needs? Who will manage your assets? If you or a beneficiary becomes seriously ill or disabled, you may wish to revise your estate plan to accommodate the increased need of that individual. This is especially true if a beneficiary has special needs and receives government benefits. You will want to consider a Supplemental Needs Trust (SNT) to protect assets for the disabled beneficiary without disqualifying him or her from receiving government benefits. While SNTs are often used for children with disabilities, they also are used for a spouse or parent who develops a disability

later in life because of an accident or disease.

As you and your spouse age, it is important to consider the cost of Long-Term Care. You may want to update your estate plan to insure that your assets are protected, purchase long-term care insurance or do Medicaid planning. If you have a 401(k), IRA or other qualified plan that requires you to begin to take distributions at age 70 ½, you should consult an attorney to see how this will impact your estate plan.

Change in Assets

You should review your estate planning documents when you acquire or dispose of a significant asset such as a business, real estate, insurance policy or new pension plan. For example, if you acquire a new business, then you should revise your plan to include a business succession plan. If you purchase real estate out of state or out of country, you will want to determine any estate tax, probate impact and transfer issues affecting this property.

Trusts can avoid the costs, delays and publicity of probate after you die and provide many other benefits including asset protection. But all too often people do not change titles of their assets to the name of their trusts. This process is called "funding" the trust. Any assets still titled in your name will have to go through probate - just what you were trying to avoid. Be sure to title new assets in the name of your trust as you acquire them and remove assets you no longer have.

Change in Residence

Although estate planning documents are typically valid from one state to another, each state has different laws about what the documents need to include and how they need to be signed. If you move to a different state, don't assume that your will made in your previous state conforms to the requirements of your new state. Provisions that do not comply with the laws of the state where you have moved could result in higher probate costs or result in property being inherited in a way you did not intend.

In addition, different states have different estate taxes and you may need to revise your documents to account for the different tax structure. In New York, there is currently an estate tax on estates valued over \$1 million.

Changes in Law

Federal and State laws have been in a period of flux. Reviewing your estate plan on a yearly basis will help ensure it is up to date and viable. In the past couple of years we have witnessed the Federal estate tax laws change five times and it due to change again in 2013. Changes in inheritance tax laws may put a larger than expected dent in your beneficiaries' inheritance or may create an opportunity to transfer assets. In New York, Medicaid laws have been changed and could render some forms of planning invalid or ineffective. All of these worst-case scenarios can be avoided if you regularly review your estate plan.

At the Pierro Law Group we utilize a ***Professional Advisors Lifetime Maintenance System*** (PALMS) that includes a yearly review to ensure that your estate planning objectives will be met and changes made. The PALMS program also gives you, your fiduciaries and other trusted advisors 24-7 access to all of your critical documents.

Making Changes to Your Estate Plan

The executor is required to carry out your wishes as you have indicated in your estate planning documents. This person does not have a lot of ability to interpret and second-guess your instruction, even if you have verbally made your wishes known.

Never try to change a Will by simply writing in the margins, crossing out words, lines, or sections of the original Will. Not only does this create confusion, potential ambiguity and will contests, but making handwritten changes could invalidate your entire Will. By law, to change your Will, you must either make a new executed and witnessed Will, or add a signed and witnessed addition, called a *codicil*, to the existing Will.

If you are revoking your Will, you should make a written declaration that you intend to revoke the old

Will. As long as you are still alive and considered mentally competent, you are free to change or revoke your will at any time. However, there are certain procedures that must be followed to make your wishes clear.

If you think a change may be in order, please contact the Pierro Law Group and we can help you determine if new documents should be drafted or whether a simple codicil amendment can be attached to your current will or trust.

What To Do with Your Estate Plan

Think for a few moments about what would happen if you became incapacitated or died today. Would your spouse, family and fiduciaries know what to do? Would they know where to find your estate planning and health care documents? Do they know whom should be notified? Do they know who your attorney, accountant and financial planner are? If you own a business, do they know what to do to keep it operating?

You don't have to tell your family everything about your assets right now. But it is very important that to have an organized Estate Plan and your family and fiduciaries know where to find it when they need it. Give copies of your signed health care documents to your physician and designated agent. Keep documents such as titles, insurance policies, estate plan, health care documents, funeral policies and other important paperwork in a safe place such as a fireproof safe. If kept in a safe deposit box, your family may not be able to gain access without a court order. You may also want to give a give a copy to your fiduciary or at the least, go over the main provisions with him or her. The Pierro Law Group's **PALMS Program** can help ensure all of the important and current documents are in one secure location as well as providing contact information for all of your professional advisors.

Conclusion

Estate plans that are being written today may not be used for another 10, 20, 30 or more years. Most of them will need revisions during that time. Do not be lulled into a false sense of security that once your initial estate plan is in place, it is done forever. Estate planning is a life long process. It is important to review your plan as your life, the lives of your beneficiaries and fiduciaries and the laws change.

Proactive planning by creating a comprehensive estate plan will save your family much turmoil in the event of your incapacity or death. When updating your estate planning documents, you should consider not only the property and assets that are being distributed, but also the people involved. Carefully consider beneficiaries as well as people with whom you have entrusted other responsibilities, including the executor of your will, trustee of a trust, power of attorney, agent under the disposition of remains appointment, and guardian of your children.

If it has been awhile since you have reviewed your documents, please contact the Pierro Law Group at 518-459-2100, 212-661-2480, (toll-free) 866-951-PLAN or email us at info@pierrolaw.com to review your plan and ensure that your assets, spouse and children are best protected.

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