

HAUSWIESNER KING LLP

6 COMMON REASONS TO UPDATE YOUR ESTATE PLAN*

Many people have a will and think that their estate plans are complete, however there are 6 common issues that may occur throughout your life that require you to update your estate plan. These issues are discussed below.

1) **Children**

If you have a child you need to update your estate plan to provide a guardian for the child. If you do not choose the guardian for your child the court will do it for you! This can result in chaos for the child and everyone involved. You are the person who knows who is the best person to be the guardian for your children. You need to make the choice!

2) **Marriage/Remarriage**

When you get married your estate plan will change. Prior to marriage your will probably provided for your assets to go to your parents or friends. Typically, after marriage people want their assets to go to their spouse. After you are married you need to update your estate plan to reflect this change. If you get remarried you should update your estate plan as well. Many times there are children from previous marriages and you need to choose how the assets will be divided. By planning your estate it will be executed smoothly. If you do not update your estate plan the estate can be tied up in court for years. One recent case is still pending and the person died in 1993! The parties involved are the deceased's second wife and his children from his first marriage. Prior to the division of the property the parties involved "had a great relationship." It is essential that each individual makes clear the way that they want their assets to be divided.

3) **Increase in Wealth**

Many people set up their estate plan when they are younger and have fewer assets. As they grow older their assets appreciate and they may, without even realizing it, approach the personal exemption for the estate tax. The government gives each citizen a personal exemption from the estate tax. In 2007 the exemption is \$2,000,000. Anything above the \$2,000,000 personal exemption is taxed at 45% tax rate! This means that a married couple could possibly have a \$4,000,000 exemption. The catch is that you must set up a trust to preserve both spouses' marital exemption. (for more information see our article on bypass trusts) When calculating the estate value for estate tax purposes life insurance proceeds, retirement accounts, bank accounts, real estate, and personal property are all included. Many people believe that choosing a beneficiary for these plans or holding joint accounts excludes the asset from your estate. This is incorrect. These steps may allow the asset to avoid probate, however, it will still be included in the estate for estate tax purposes. Given the appreciation of home values and retirement accounts many people are approaching the personal exemption and need to set up bypass trusts to preserve both spouses' personal exemption as well as pursue other options to avoid paying the estate tax. By setting up a bypass trust an individual can save up to \$900,000 in estate taxes.

4) **Non-Citizen Spouse**

Many people do not realize that a non-citizen spouse does not receive the unlimited marital deduction that citizens enjoy. This means that if a citizen spouse passes away and the citizen spouse has assets of over the \$2,000,000 personal exemption the estate tax is due immediately. This can be burdensome since the assets may be in real estate or retirement accounts and may not be liquid. It could force liquidation of assets in ways that are not tax advantageous as well as liquidations where the market is in flux. The solution is a qualified domestic trust which preserves the marital deduction for non-citizen spouses. Any family that is approaching the personal exemption needs to address this issue.

5) Health Care Power of Attorney Executed Prior to 1996

In 1996 Congress enacted the Health Insurance Portability and Accountability Act (HIPAA). The result has been that it is much harder for other people to access your health information. Unfortunately, this has been interpreted in many different ways by different hospitals and has resulted in friends and family being denied access to their loved ones information when they are attempting to help. The easiest way to remedy this is with a health care power of attorney that clearly states that the agent is authorized for purposes of HIPAA to view the medical records. If an emergency occurs it is essential that your agent has access to the proper information to make the right decision for your well being. If you have a power of attorney executed prior to 1996 it is critical that you update this document!

6) Retiring Outside of the United States

Many people decide to retire in another country. Retiring in another country raises many different tax issues. You may have an income producing asset here in the United States that you do not want to sell. You will want to collect U.S. social security in that other country. It is important that you meet with an attorney who will analyze your situation based on U.S. law, international law and any treaty that the two countries have signed.

For more information please contact Peter King, HAUSWIESNER KING LLP, 8200 Greensboro Drive, Suite 900 McLean, VA 22102 (703) 462-5478
pking@h-klaw.com or visit our website at www.h-klaw.com.

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