



# SEVEN GOOD REASONS TO UPDATE YOUR EXISTING ESTATE PLAN

## 1. Avoid Probate and Conservatorships

A "Last Will and Testament" transfers your probate estate upon your death, but only if probate is opened. As you age, you may feel a greater need to avoid probate with use of a Revocable Living Trust. A Living Trust can also help avoid the need for a conservatorship if you become disabled and unable to manage your financial affairs. Many clients who felt the will-based estate plan was more cost effective when they were younger, now feel that the Living Trust is a better plan.

A properly drafted Living Trust can not only avoid probate on your death, but can also protect an inheritance for your children, maximize the withdrawal period for inherited IRAs, and generally make things easier for your family. We have reviewed many trusts downloaded from the internet or generated by the "Living Trust in a box" offered by Suze Orman. Most have failed to provide proper planning for even simple family situations.

Estate planning is not like a home plumbing job. If you botch a plumbing job, you can always call a plumber, but if you botch your estate plan, when do we find out about it? After you are gone, and that's too late. We are talking about two of the most important things in your life: your family and your money. Make sure you get it done right!

## 2. HIPPA Medical Information Release

Several years ago, the federal government enacted legislation that made it a federal crime to disclose your protected health care information - even to your family - without your written consent. As part of your estate plan, we draft a much broader document than the release you may have signed at your doctor's office. For instance, one client signed a release at Kaiser, and later when he needed to be hospitalized, Kaiser sent him to Swedish Hospital. His wife was shocked to learn that the Kaiser release was not valid at Swedish! Our document would have allowed her access to his medical information.



### 3. Update Your Powers of Attorney

Often, there are three reasons for updating your powers of attorney:

#### 1. Age

Many financial institutions refuse to honor such documents which were signed more than 10 years ago, and there is no legal requirement for them to do so! Therefore, even if there are no other changes, your powers of attorney should be updated every ten years, and perhaps every 5-7 years if you are in poor health.

#### 2. The Agent

You may need to change the agent. John's son, who lived in Denver 12 years ago, was appointed as John's agent. His son has since moved to California, and his daughter has moved back to town and is now helping to take care of John. A change in the agent may be appropriate. Clients often need to change the executor under their will for similar reasons.

#### 3. Effective on Disability?

When you were younger, you may have been more interested in protecting yourself from your child (agent) than making things easier, so your document may have been drafted to be effective only if you were disabled as certified by your doctor. Today, if you are more interested in making things easier for your child (agent), we would draft your new document to make it effective immediately, and not require your doctor to be involved.

### 4. Situations Change

Sara wanted her child's inheritance held in trust until the child was 35 years old. The child has now graduated from college, has a good job, and a family. Although Sara's child is only 29 years old, Sara now wants the child's inheritance distributed outright upon her death, and she now wants that child to serve as her executor. George, on the other hand, originally left 1/3 outright (not in trust) to each of his three children. His oldest daughter is now on Medicaid and SSI, and an outright inheritance would cause her to lose eligibility for these public assistance programs. Her share needs to be left to her in a "Special Needs Trust" to avoid losing eligibility. His other daughter has no children, is in poor health, and is in a bad marriage. If she were to die shortly after George, her 1/3 would likely pass to her husband. George wants her share left in trust, distributed to her as actually needed, but on her death, to pass to his other children and NOT her husband. His son now has a drug problem, so George now wants his son's share held in trust until the son tests drug free for 36 months. An inheritance can also be held in trust for a child who (or whose spouse) has poor spending habits. We can discuss the various trust terms which might be applicable to any given situation at your free consultation.



## 5. Retirement Plan Beneficiaries

If you have a significant IRA or other retirement plan, it is important to review both your beneficiary designations and your estate plan for consistency to minimize the initial taxation on your IRA. Ken's estate plan created a special needs trust for his disabled daughter, but he named her as a beneficiary on his IRA. On his death her share of the IRA had to be spent down before she would be eligible for Medicaid again. Moreover, because Ken's trust was drafted before the final IRA regulations went into effect, even if payable to the trust, the IRA would have to be liquidated (and taxes paid) within five years of Ken's death. A few simple changes could have eliminated these problems.

## 6. Reduce Estate Taxes

A properly drafted Living Trust estate plan can help reduce estate taxes for married couples. A frequent change we currently recommend is to let the surviving spouse determine if such planning is needed after the first death. Since Congress can change the estate-tax exemption at any time, such planning often makes the most sense. We can discuss this possible change and how it works during your free consultation. This change may be inappropriate for some clients, and other clients may already have this planning technique in place. A careful review of your documents may be appropriate.

## 7. Make Things Easier for Your Family

Anyone who has been involved in a protracted probate or conservatorship will tell you that there must be a better way - and there is. A properly drafted estate plan can make things easier and less expensive for your family. That is what estate planning is all about. Remember to look at the "big picture" and not just focus on a particular problem. A simple solution to one problem, like deeding your house to one of your daughters to avoid probate, can create greater problems in other areas, such as losing the capital gains exemption (up to \$500,000) on the sale of the house during your lifetime, or the house passing to your son-in-law on your daughter's death.

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