

# WHY YOUR ESTATE PLAN SHOULD BE REVIEWED NOW

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This year, reviewing your estate plan should be near the top of your “to do” list. Laws have changed. Circumstances may have changed. Perhaps you have no estate planning documentation at all.

There are several specific reasons why a review now is appropriate.

1. In 2011, the federal estate and gift tax exemptions were increased to \$5,000,000. Thus, there is no estate tax for decedents with taxable estates under \$5,000,000 and no gift tax for up to \$5,000,000 of lifetime transfers exceeding annual exclusions. This will permit a simplification of many estate and gifting plans. Married couples with taxable estates have typically used two (2) Living Trusts to get two exemptions. The executor of a deceased spouse may transfer the unused exemption of a decedent to the surviving spouse, starting in 2011. Now, when the taxable estate is under \$10,000,000, a single joint Living Trust can often be used, although there are reasons to continue using two (2) in certain circumstances.
2. The increased exemption may cause unexpected results. Many estate plans provide that the exempt amount passes to children, not a surviving spouse. Since the exempt amount has increased, the amount passing to these individuals would also increase. If this increase is not intended, revising the estate planning documents is necessary.
3. The Michigan legislature recently passed an extensive Michigan Trust Code (MTC). The MTC applies to all trusts no matter when signed. Detailed rules are included for trustee duties, notifying beneficiaries, creditor rights and accountings. Trust documents should be reviewed and updated in light of these changes and the wishes of the grantor.
4. Everyone should have an up-to-date estate plan. Estate planning involves arranging our affairs to provide for the orderly management and disposition of our property at the time of incapacity or death. As circumstances change, documents should be updated. Without proper documentation:
  - A. The right people may not receive property at the right time with the proper management. Heirs or assets may be difficult to locate.
  - B. The Probate Court may be involved unnecessarily, wasting time and money.
  - C. Intended gifts to charity or others may not occur.
  - D. Avoidable taxes may be owed.
5. Many estates will be subject to Probate, but this could be avoided. A Last Will and Testament is subject to Probate Court administration. The Court will determine if the Will is valid and will supervise the asset distribution. This is public and can be costly. Use of a Living Trust as an estate planning document can avoid Probate Court involvement. A Living Trust is often compared to a legal bucket into which an individual places their assets, without restrictions while they are living, but without the need for probate during incapacity or death. The next person the Trust specifies to be in charge can administer, invest and distribute the assets privately.

6. Many estate plans do not include the necessary documents. Every estate plan should include a medical power of attorney, the so-called patient advocate designation. Otherwise, there may be a dispute concerning who can make medical decisions for you during incapacity. The medical power of attorney typically includes instructions for life support, organ donations, "no coding" and related items. An authorization to allow the release of health information to specified individuals under the Health Insurance Portability and Accountability Act ("HIPAA") is now important. Do you have a financial power of attorney giving others authority over your finances in case of incapacity, or immediately if you prefer? Most estate plans include a living trust as the key document for specifying the heirs.
7. The ownership and beneficiary of each asset should be checked. Many assets are owned in ways that have unintended results at death. For example, jointly owned assets automatically pass to the survivor when one owner dies. This is true even if a Will or Living Trust specifies that assets are to be split equally among several individuals. Another common error is a failure to name any backup beneficiary for retirement benefits or insurance in case the initial beneficiary is deceased. In addition, many people using a Living Trust fail to make the Trust the owner or beneficiary of their assets. Assets owned by or payable to a Living Trust would not be subject to Probate upon death or incapacity. However, "funding" needs to be done carefully. Special rules apply to funding retirement benefits and life insurance. The ownership and beneficiary of each asset should be checked.
8. It is never too soon to consider long-term health care insurance. As our population ages, the need for this protection increases. Medicare and Medicaid do not provide long-term health care coverage for most people. Long-term health care insurance is the fastest growing segment of our insurance industry. Several companies provide competitive products, but this insurance costs more for older individuals. Therefore, reviewing this planning option now is wise.
9. Finally, an estate plan review is appropriate to update the asset list and beneficiary contact information in your advisors' file. Do your advisors and family members know each other? Do your advisors have a current schedule of assets and addresses for heirs? Have you left instructions for burial wishes, memorial services, computer access codes and the like? We recently needed to hire a private investigator, at significant expense to the estate, to try to locate a beneficiary. Up to date address information could have avoided this problem.

If any of the above items applies to you, reviewing your estate plan now would certainly be wise. Having these important documents up to date is the best way to minimize your risk and the family's expense in case the documents are needed. Have your documents reviewed and prepared by an individual that is knowledgeable and up to date in this changing area of the law.

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