IS IT TIME FOR AN ESTATE PLAN CHECK-UP?
Top 10 Reasons To Review Your Estate Plan

Due to recent changes in the federal tax laws and Missouri trust laws, now may be the perfect time to get an estate plan check-up. There are many reasons an estate plan may need to be updated ï your goals may have changed, you may have new children or grandchildren, your named fiduciaries may have moved away or are no longer able to serve, or your financial situation may have significantly changed. Below are the questions you should ask to see if you should update your estate planning documents.

1. **Should you name different fiduciaries?**

Who should serve as your agent to make financial and health care decisions if you become incapacitated? The answer to this important question will likely change as you, your agents, and your children mature. You may also wish to change who will make personal or financial decisions for your minor or disabled children after you pass away. If you already have estate planning documents, you should review your choices of guardians, conservators, trustees, agents, and personal representatives to determine if those persons are still the best choices.

2. **Should you have a Revocable Trust?**

Traditionally, most people used a Last Will and Testament as the primary instrument to incorporate their estate planning objectives. During recent years, however, a strong trend has developed favoring the use of the Revocable Trust to implement an estate plan. The *Revocable Trust* is a legal entity created by the transfer of property to the trust during your lifetime and governed by a trust document that may later be modified by you. The Revocable Trust may serve as a management vehicle for property during your lifetime, and as a means of management and distribution of the estate following death. The primary advantage of a Revocable Trust is the avoidance of the publicity, expense and delay of probate.

3. **Are all of your assets titled in the name of your Revocable Trust?**

If you have a Revocable Trust, then the Trust should own most of your assets. All too frequently, people create a Revocable Trust and either never fund it or forget to designate it as the owner of newly acquired assets. Funding your Revocable Trust is the process of transferring ownership of your assets to the Trust. It is necessary to avoid probate and may minimize estate taxes.

4. **Have you completed beneficiary designations consistent with your estate plan?**

Generally, you will not transfer the ownership of your life insurance and retirement accounts to your Revocable Trust. Rather, upon your death, life insurance proceeds and retirement accounts pass to the named beneficiary, overriding the terms of your Will and Revocable Trust. It is important to review the existing beneficiaries on these assets to ensure they will pass consistent with your estate planning goals.

5. **Are your assets owned in a manner to protect your assets from creditors?**

If you have creditor protection concerns, you may wish to consider taking advantage of simple strategies to protect your assets. For Missouri residents, these include jointly owning property with your spouse, creating a qualified spousal trust, maximizing contributions to retirement accounts, following the formalities of business entities, and being properly insured. More advanced strategies, such as creating a Missouri asset protection trust, also exist.

6. **Have you provided your spouse and children with creditor protection?**

Many estate plans leave assets to family members outright, or in trusts which either have rights of withdrawal or terminate at specified ages. You may wish to create a Lifetime Trust, under which the trust assets are held for the beneficiary for his or her lifetime with distributions made in the trusteeôs discretion based on a standard you set forth. This type of trust may better protect the assets from the beneficiaryôs creditors. In Missouri, the beneficiary may retain control over the investment and distribution of the trust assets by serving as sole trustee, without a loss of creditor protection. If a trust to be created at your death for your family contains mandatory distributions, gives rights of withdrawal, or terminates at a certain age, this protection is lost.

7. Have you protected your spouse and children from divorce?

If a Lifetime Trust is drafted and administered properly, those trust assets should not be subject to a division as marital property if the beneficiary divorces. You have the opportunity to shield your childrenõs inheritance from divorce if you implement the right type of lifetime trust. Many trusts mandate that *all* of the income be distributed to the beneficiary. This could cause the trust assets or distributions to become marital property. To achieve this protection, you should avoid rights of withdrawal and mandatory income payouts. In addition to the creditor and divorce protection, a Lifetime Trust for your family can also have estate and income tax benefits.

8. Should you take advantage of the current gifting opportunities?

The gift tax exemption is significantly larger than it has ever been, and larger than it was ever expected to be. Accordingly, this may be the perfect time to make gifts. Depending on the size of your estate, there may be an estate tax due upon your death. If so, it may be more tax efficient to use the gift tax exemption during your life, rather than rely on the estate tax exemption at your death. Another benefit of a lifetime gift is that all of the future income and appreciation on the gifted assets passes estate tax free to the donee. You may also wish to take advantage of the annual gift tax exclusion (currently $14,000 per donee, but indexed for inflation) as well as the education and medical gift exclusion.

9. Have you accidentally disinherited your spouse?

Many Wills and Revocable Trusts contain formulas that leave assets to a spouse based on the estate tax laws at the time of death. The most common formula is one that divides your trust assets between a credit shelter trust (which receives the amount of your remaining estate/gift tax exemption) and a marital trust (which receives your remaining assets). If the credit shelter trust is left to or for the benefit of your children, and your surviving spouse is only a beneficiary of the marital trust, you could unintentionally disinherit your spouse. This type of estate plan was common for couples in a second marriage.

10. Does your family have the needed flexibility after your death?

Your Revocable Trust becomes irrevocable at your death, meaning that it cannot be amended or otherwise changed. However, you can provide your family with the ability to redirect the trust assets after your death by giving them a *power of appointment*. This allows the family member for whom the trust is being held to respond to changes in the law or family circumstances.

There are many important reasons to have your estate plan reviewed ï some are obvious but others require an understanding of recent changes in the law.

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