

Elder Law Guys: Time for a non-medical checkup? Review your will

July 27, 2020 7:45 AM

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We've written often in the past about the need for each of us to have an estate plan in place, not just for us, but also for our loved ones.

The plan should include a will and/or trust, a power of attorney for financial affairs and a health care directive. As many as 60% of us die without a will. For those of you who may have listened to our preaching about the necessity to have one and actually went forward with doing it, congratulations.

But it ain't over yet. The COVID-19 crisis' effects, especially as to our older clients, particularly those in a long-term care facility, have highlighted for us and for them the need to give those documents a tune-up, especially their wills. Why? With any significant change in your situation — and we certainly know the pandemic is a significant change — reviews are in order. And remember: None of your estate planning documents are static or written in stone.

Here are some key considerations. Have there been what we would call life changes?

For example, did you name someone as an heir who is no longer in favor with you or — worse yet — has died? Who should get what they would have gotten? Are there now new people in your life — be they family members or not — whom you might wish to share in what you may have?

The same applies to the person or persons you named to handle your affairs at your death — the executor. As you may have aged over the years — who hasn't? — they may have also. Are these individuals still around, not just physically, but geographically? Do they still want to fulfill what can be a rigorous role? If they do, are they still as capable of fulfilling that role as when you first named them to act on your behalf? Should you now look to an institution such as a bank or trust company to perform those obligations, and is your estate worthy of consideration by an institution?

Do you have multiple children? Where once you may have wanted to treat them equally in the distribution of your estate, have circumstances changed such that you might want to treat each one differently? For example, you may have a daughter who has been a whopping financial success and a son who has elected to be less concerned with money and who works for a small nonprofit organization, affording him minimal income. Do you want to “reward” him for picking such a career and give him a greater share of your estate than your daughter?

Have any of your previously minor children now attained the age of majority? If so, do you want them to receive sums of money at the tender age of 21, 25, 30, etc.? Can they handle it, or will the Rivers Casino be the ultimate beneficiary?

Divorce! Has that happened since the last time you looked at your will? Do you still want your prior spouse to get what you were willing to give her/him when you were married? And, worse yet, do you want those monies shared with the new spouse if your ex-spouse remarries? Similarly, did your spouse die and you, in your old will, leave everything you had to her/him? Where do you want it to now go? It's really important to do this as soon as possible. Maybe you don't have anyone in mind. You can always consider a charity to receive some or all of your largesse.

You may now have grandchildren where before you had none or a lesser number than now. Perhaps one or more of them have special needs for which a special needs trust may be of significant benefit.

When you are passing on your assets to others, you should really consider how these assets are to be distributed. Rather than giving a fixed amount to someone, think in terms of percentage amounts. Why do we say this? Well, think about when you first wrote your will. Maybe you had \$60,000 and wanted each of three children and a special friend to get \$15,000, equally. Time has passed, your money has grown to \$115,000. Your special friend is not so special, but you still want her or him to get the same amount and have your three kids share equally in what's left. So, it's much simpler to say "\$15,000 to X" and "33.3% (or even unequal percentages) to each of the three kids."

Maybe your financial situation has gone south for a variety of reasons, and you may not want your special friend to get anything, wanting only your kids to share what there may be. Is your brain now hurting? It's not our intent to cause that, but rather have you give thought to the possible combinations and permutations. Thus, the reason for a frequent review of your documents, especially the will.

We often recommend to clients to look at these documents on New Year's Day; your first New Year's resolution. If nothing's changed, just put the documents back where they were. If things have changed enough since the last time you looked at them, take action. Don't try to rationalize away inertia, even though rationalization is the aspirin of mental health.

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