

Time for an Estate Planning “Tune Up”

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An Estate Plan is like a car. You need to give it a “tune-up” every so often. Some people have no idea what’s in their plan, and they don’t know if it’s even useful to them anymore. What good is that?

Now roll up your sleeves, and let’s dust off your Estate Plan and give it a tune-up! It might be a bit messy, but it will be worth it.

Advance Health Care Directive: A Power of Attorney for Health Care (some call it a “Living Will”) executed before 1992 has likely expired. The older powers of attorney for health care had a “shelf life” of 7 years. Now they are called “Advance Health Care Directives.” Also, beware of the common misconception that spouses are automatically allowed to make life and death decisions for one another. A health care directive should be much more than a “pull the plug” document that addresses only “end of life” decisions. A solid document will cover many more circumstances. Even if the health care directive is current and comprehensive, what about your parents’ directives?

Living Trust: Take a good look at your living trust. Is it an “AB Trust” where you are required to split the trust into two separate trusts? Given the newer tax laws, splitting up your trust into two may no longer be necessary. Many clients are dismayed to learn they have to split their trust into two trusts...one trust (usually called the “B” trust) is typically irrevocable and often limits the surviving spouse’s access to certain assets. You need to get a Tax ID number for it and file tax returns for the separate trust every year. You may even have to prepare annual accounting reports in some cases.

Marriage: If you just got married for the first time, it is definitely time to revisit your documents. If you have children from a prior marriage, there are certain living trusts that may better suit your situation so your kids are adequately protected if your spouse were to remarry after you passed away. Also, if you and your ex-spouse had an estate plan together, you definitely need a review.

Children: Have you had children since your initial plan? In that case, you at least should name guardians for your children. Also, your beneficiary designations need to be revisited. Children’s trusts may be in order so your child’s inheritance is managed properly.

Funding: Have you funded your trust? This is the number one reason living trusts fail. Is your home in the trust? Many clients are dismayed to find out their lawyer did not file the deeds or the paralegal from the legal clinic didn’t get around to it.

Power of Attorney: What powers does your agent have and when do they go into effect? Some people think a Power of Attorney for Finances is a substitute for an Estate Plan. While it is indeed a useful tool, the power dies when you die. Your agent will have a hard time managing your affairs after you've passed away. Banks and other institutions don't like to part with money that easily. Also, make sure your chosen agents for Power of Attorney for Finance and Advance Health Care directive are ready, willing, and able to do the job. Is there any language in your power of attorney that provides for long-term care planning, gifting, transmutation, and Medi-Cal language?

Special Circumstances: If you have a child with special needs, you may seriously want to entertain setting up a Special Needs Trust so your child may remain eligible for government benefits. Otherwise, the government may withdraw available benefits. Also, by giving money to parents or other older persons, you may unintentionally be disqualifying them from Medicaid or similar benefits.

Just like a car, you need to make sure your Estate Plan is working for you. You may need a brand new one or a simple tune-up. In many cases, you may be just fine. However, ignorance is not bliss when it comes to you and your family.