

Diagnosing Your Existing Estate Plan

By Robert Mansour, Esq.

When I talk about estate planning, some people are quick to shut me down. I think they are afraid I might be trying to sell them something. They quickly state, “Oh, we’ve already done that.” However, in most cases, they have no idea what their plan even says. Here are some things to think about when reviewing your existing plan.

If you already have an estate plan, ask yourself the following questions:

1. Do you have a testamentary trust or a living trust? The former only comes into existence after you pass away. A testamentary trust is of no use while you are still alive. A living trust helps you while you are “living” because your named Trustees can handle your affairs for you in the event you can no longer do so.
2. What kind of living trust do you have? Is it what you need? Some people think a “living trust” is a one-size-fits-all document. There are many different kinds of trusts. Do you know which “kind” you have?
3. Do you have a Schedule A somewhere in your plan? Near the end of your Living Trust or somewhere in your document binder, you should have a solid list of all trust assets. There are two reasons for this. First, from a practical standpoint, your trustees will thank you. Second, if an asset was not placed into the trust, the mere fact it is listed on your Schedule of Trust Assets may be enough for most judges.
4. How do successor trustees take charge? What is the system of succession and is it spelled out clearly? It is important to outline exactly how your successor trustees will take charge of your trust assets. This isn’t done by magic, folks...there has to be a clearly spelled out system.
5. Are your assets clearly designated as community property or separate property? If any of your assets are to be treated as “separate” property, then you should make sure that is clearly spelled out in your documents.
6. Are all your beneficiary designations in order? When was the last time you checked? Some people are surprised to find out their ex-spouse is still their beneficiary. The most common mistakes I see is people naming only one beneficiary with no backup or naming minor children as beneficiaries of life insurance policies.
7. Is your trust revocable or irrevocable? Who has the power to do so? If it is revocable, when does it become irrevocable?
8. Does your Health Care Directive really capture your wishes? When is it effective? Do you have a HIPAA authorization? Your named agents may not have access to your

private medical and financial records unless you sign the proper releases in advance. Remember your spouse is not automatically entitled to your documents.

9. When does your Durable Power of Attorney become effective? Some people are surprised their current document calls for 2 or 3 doctors to declare them incapacitated before anyone can even use their document.

10. Was your Health Care Directive executed prior to 1992? Health care directives signed before 1992 had a 7 year shelf life. They have expired.

Of course, there are more questions to consider, but this is a good start. If you don't know the answers to these questions or would like your plan reviewed, please feel free to make an appointment. Your plan should reflect your wishes, and your lawyer should explain things to you. I want my clients to actually understand their plan not just have one.

Please visit my estate planning website at www.MansourLaw.com or my personal injury website at www.ValenciaLawyer.com.