

When should you review your Estate Plan?

As a Professional Fiduciary, I let my clients or potential clients know that I am not an attorney. It is important that If I am going to be the Power of Attorney, Successor Trustee or Executor of the Estate, that I understand fully the documents. Following is a recent case example that may interest you the reader.

Case 1 - Elderly couple, failing health, Special Needs Adult Child

In meeting with this couple, I asked if I could review their estate plan. In reading the plan, there were some glaring issues. First off the plan was amended in 2007. The tax laws were very different then. Second, the attorney that drafted this plan was not well versed in Special Needs Trusts. The language was not consistent throughout the plan, and it stated that the Special Needs Child would get a direct distribution from the estate. This would create a situation where the benefits this person is getting would be terminated. Third, there was no Health Care Directive.

We set up an appointment with an attorney that I know who specializes in Special Needs Trusts. She explained carefully to my client the major problems with this existing trust.

A. 1/2 of the real estate would not get a stepped up basis. This would create a taxable event at the death of the second parent. Being that the house is worth over 5 million, this would be very painful indeed.

B. The Special Needs Trust description was indeed problematic and would probably force the beneficiaries to go to court to get clarification and possibly the Special Needs Trust would be invalidated due to the inconsistencies in the document.

The attorney stated that this was the first time that she had a Professional Fiduciary come to her because of the concerns regarding the existing living trust.

Technically it is not the role of the Professional Fiduciary to give legal advice. This is the role of the attorney. But it is always best when the attorney and the Fiduciary can work together. Because it is the Fiduciary that has to carry out the wishes of the documents involved. If the fiduciary is unclear as to what is in the Estate plan, then it has to go to the probate court for clarification. Figure it out now before you have to expend more money later.

In Summary - When Do you Need to Review your Estate Plan?

1. When the Tax Laws change
2. When you have minor children - Guardianship
3. When your minor children become adults - You might want to be their Power of Attorney
4. When there is a major change in your family circumstances
5. When you buy Real Estate - Titling property correctly in order to avoid Probate.
6. When you want to change beneficiaries

7. When a family member inherits money or property. - If you co-mingle the money it changes things.
8. When you have a Special Needs relative
9. If you have a beneficiary that may not be able to handle their own finances due to addictions / health / or just irresponsible habits.
10. When an adult child marries.
11. Is your Power of Attorney form over 5 years old? - You might need to sign a new one.

I am sure there are more reasons, but these are the more important ones.

I hope this information has been helpful. Feel free to contact me if you would like to schedule an appointment over the phone or in person.

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