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Spring Cleaning: Time to Clean Up Your Estate Planning

Your estate plan, like your home, periodically needs a thorough polishing. Your life circumstances are constantly changing, and an estate plan that perfectly met your needs a couple of years ago may now be cluttered with outdated provisions or documents. With spring fast approaching, now is the time to dust off your estate plan to ensure that it will still achieve your goals, as well as to avoid unintended consequences that may arise as a result of divorces, deaths, births, or other changes that have occurred since the last time your plan was reviewed.

Here are a few of the items you should review with your estate planning attorney so any necessary changes can be made to ensure your estate plan is up to date.

Have your children reached adulthood? It seems like just yesterday that they were in diapers, but time passes quickly. Your estate plan likely needs to be revised if your children are no longer minors. Now that they are adults, the guardian you named to be their caregiver no longer needs to be included in your plan. In addition, once your children have reached adulthood, you may want to adjust your estate plan to take their personalities and needs into account. For example, if one of your children tends to be irresponsible with money or has developed an addiction, a trust permitting distributions only for the child's health, education, support, or welfare may be a better option. Or, if one of them has a lower paying job, such as teaching or social work, and the other is a wealthy investment banker, it may be desirable to adjust the amount each will inherit based on their needs. Also, if your children now have a family of their own, you may want to revise your estate plan to include your grandchildren.

Do you need to name different fiduciaries? Your estate plan can be impacted by more than just changes in your life circumstances. If your fiduciary, e.g., executor, trustee, or agent under a power of attorney, has died, moved to Costa Rica, is otherwise no longer able or willing to serve in that role, or changed his or her name, you need to revise your

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estate plan to designate a new fiduciary or reflect the name change. It is also wise to name alternates who can serve if the fiduciary is not available when needed—and to regularly verify that those alternates are still available and willing to act if necessary. If the fiduciary you have named is not available when you pass away, and you have not named an alternate, the court will appoint someone to act in that role, and it may not be the person you would have chosen.

Has your spouse passed away? It is especially important to review and revise your estate plan if your spouse has died. The following are only a few of the changes you may need to incorporate into your estate plan to ensure you and your family are still fully prepared for the future.

- It is likely that you named your spouse as one of the main beneficiaries of your will, trust, retirement account, or life insurance policy, so it is crucial for you to update the beneficiaries named in those documents.
- If your spouse was named as the successor trustee of your trust, your agent under a power of attorney, or your health care proxy, you need to take the necessary steps to name another trusted person to fill those roles.
- In some cases, tax issues should also be discussed with your estate planning attorney. If you and your spouse have a large amount of money and property, the estate of your deceased spouse may want to consider filing a Form 706 (United States Estate and Generation-Skipping Transfer) Tax Return) within nine months from the date of death to allow you to apply his or her unused estate and gift tax exclusion amount to your own transfers during your life and at death. This can potentially exclude a very large amount of money and property from your taxable estate, as the total exclusion amount for married couples during 2020 is \$23.16 million.
- If you and your spouse owned real estate jointly with a right of survivorship, the property was automatically transferred to you when your spouse died. Although a new deed is not required, you may choose to file the death certificate or an affidavit in the county real estate records office providing notice of the transfer. If full ownership of the property was not automatically transferred at death, an executor's deed conveying the property to the heir will provide evidence that the deceased spouse is no longer an owner of the property.

How will recent changes in the law regarding retirement accounts affect your beneficiaries? A new law called the SECURE Act made significant changes that could have an important impact on many non-spouse beneficiaries, and you should discuss the potential consequences on your estate plan with your estate planning attorney. If you have named your children as the beneficiaries of your retirement account, they will now have to withdraw the entire balance within ten years of your death instead of “stretching” distributions over their own life expectancy (as allowed under the old law). This will result in the acceleration of the income tax due, which could push your children into a higher tax bracket and eat up more of their inheritance than you anticipated. In addition, if you created a revocable living trust or standalone retirement trust with conduit

provisions, it will no longer provide long-term asset protection and growth because the trustee is now required to distribute the entire balance to most beneficiaries within ten years of your death. You should discuss alternative trust structures with your estate planning attorney, such as an accumulation trust, which can provide longer term protection for your beneficiaries.

In addition, it is prudent to regularly review and confirm your retirement account information to ensure that your beneficiary designation forms have been filled out correctly: You should verify that you have named an individual or trust as your primary beneficiary and that contingent beneficiaries have also been named.

Don't Sweep an Outdated Estate Plan Under the Rug

If you don't clean up your estate plan, the result could be a big mess for your family and loved ones to straighten up when you die. Call us today at (435) 628-7004 to schedule an appointment so we can review and amend your estate plan to ensure you will receive the care you need if you become too ill to care for yourself and to provide for your family members or loved ones once you pass away.