

## Has Your Estate Plan Kept Up With Your Life?

By Frederick M. Misilo, Jr., Esq.

In our daily lives, regular checkups are (or should be) routine. Whether it is a visit to the doctor or dentist, an oil change on your car, or service on your furnace, we all gain peace of mind when things seem to be “in working order.”

But what about your estate plan? When was the last time it got a checkup? Most estate plans should be reviewed every three to five years. Here are some key reasons to update your estate plan so it reflects developments in your life.

**Named fiduciaries are no longer appropriate.** Within your estate planning documents, you have appointed individuals who have been nominated to serve important and trusted functions either on behalf of yourself, your children, your estate, or a trust. It is common to name siblings, friends, or professional advisors in these roles. If any of these individuals have become disabled, have died, or are no longer appropriate, it's time to replace them in your documents. Also, if your children were too young to be nominated for these roles when you created your estate plan, you may want to consider whether they are sufficiently mature and capable to be nominated now.

**You have acquired assets that have not been incorporated into your estate plan.** A critical function of your estate plan is to ensure that your assets are managed and distributed according to how your estate plan has been structured. For example, if you have purchased life insurance, acquired a second home, received an inheritance, or changed jobs and have a new group life insurance policy since you created your estate plan, it is important to review whether these newly acquired assets are properly incorporated into your estate plan. Failure to do so could have negative consequences such as increased estate taxes, potential loss of government benefits for a family member with special needs, or unnecessary probate administration and/or litigation costs.

**Your net worth has increased, resulting in the possibility of increased estate tax liability.** Increased wealth creates the possibility of increased estate taxes. This is particularly relevant to married persons who did not plan for the potential of estate taxes when they created their estate plan. This is a trap for the unwary. In Massachusetts, an estate in excess of

\$1 million in gross assets is subject to the Massachusetts estate tax. Many people are surprised to learn that their estates face potential estate tax liability when they add up all the assets that are includable in a taxable estate. Any asset that the decedent owned or controlled at the time of his or her death is includable, including the death benefit of life insurance policies, including term policies, owned or controlled by the decedent. By adding credit shelter trusts to your estate plan, your spouse and you can save your estate potentially thousands of dollars in estate taxes.

**Your spouse or you have been diagnosed with a significant or progressive disability.** A typical estate plan includes a durable power of attorney and health care proxy in which you name one or more persons to act on your behalf. These documents are particularly important, since they empower these persons to make significant decisions for you in case you can't make decisions due to a physical or mental impairment, or can't communicate your decisions due to lost capacity. A spouse is often named as the initial agent, and a successor is also named in case a spouse dies or becomes unable to perform these duties. If the initial agent has been diagnosed with a serious or progressive disability, it is prudent to revisit whom you have designated as a successor and perhaps consider adding successors as a precaution. Also, asset management and protection options should be considered whenever a significant diagnosis occurs.

So, if you haven't had your estate plan reviewed in the past three to five years, you should – no excuses! A review of your estate plan is easy. An office, phone, or video conference with your estate planning expert is a useful first step to review existing documents and to discuss changes. Make that call today. As we all know – if you put off what you ought to do, you will end up not having enough time to do it properly.

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