



Discouraging Disengagement

A short and helpful list to motivate clients to maintain estate plans.

BY JAMES E. BRILL

HERE'S A FAMILIAR SITUATION: YOUR CLIENT HAS JUST SIGNED THE ESTATE PLANNING DOCUMENTS THAT YOU SO CAREFULLY PREPARED AND THEN ASKS, "WELL, COUNSELOR, WHEN AND HOW OFTEN SHOULD THESE BE REVIEWED?"

You recall unsuccessful attempts to motivate clients to come in for an annual legal checkup. You also recognize that all your clients have yet to return on schedule every five years as you recommended. In fact, except for lengthy travel and serious trips to the emergency room, your clients cannot identify any event that would encourage them to come back to review their estate plans. What to do?

In desperation, you decide that you need to do something different. You drop everything, diligently dust off your dictionary, and delve deeply into the detritus of the definitions. Deliberately using alliteration to demonstrate the desirable details, you deftly dictate a dandy draft designed to destroy the defenses, deferrals, and delays of disengaged clients.

WHEN TO CONSIDER REVISIONS TO YOUR ESTATE PLANNING DOCUMENTS

Death: Not yours, but the death of a beneficiary, an executor, a trustee, a guardian, or one who holds your power of attorney.

Disability: Same considerations as death.

Decline: Although not as serious as disability, your own declining mental or physical health, as well as that of others, should be noticed and watched.

Disaffection: This is when you no longer wish to provide benefits or entrust someone to serve as an executor, trustee, guardian, or agent under a power of attorney.

Disappearance: This is disaffection on steroids. If you lose

touch with the executor, etc., then the person is considered missing and must be replaced.

Domestication: If you plan to get married, or actually do get married, in Texas you and your spouse will be subject to the community property system. The results could be surprising. Consider an agreement in contemplation of marriage.

Divorce Pending: Do you really want your estranged spouse to make medical decisions for you or inherit your assets if you die while the divorce is pending?

Divorce Finalized: You might want to end all benefits and appointments in favor of your spouse after you are divorced. There are statutes that attempt to do this for you, but they are not self-executing and you may end up back in court to claim those benefits.

Death Taxes: They are not going away and the “tax-free amount” could decrease or even increase, and that could complicate or simplify your situation.

Designation: If your generosity is redirected to another person, you should change beneficiary designations for life insurance, 401(k)s, individual retirement accounts, etc., to reflect current choices.

Distrust: Lack of trust is the best reason to change trustees, executors, and those who hold powers of attorney.

Dissipation: When a beneficiary has been identified as a spendthrift, benefits should be under the control of a trustee.

Drugs: Special planning is required for a beneficiary who has problems related to illegal drug use, abuse of prescription drugs, or abuse of alcohol. Gifts to those beneficiaries also should be under the control of a trustee.

Descendants: Although the welcoming of a child or grandchild is an event to celebrate, if a child or grandchild is placed for adoption or is born out of wedlock, special drafting may be required.

Domestic Partner: Consider whether benefits should be given or withheld from your partner or the partner of another family member or beneficiary and, if given, the appropriate method for doing so.

Disaster: A fire, a flood, a tornado, or a hurricane could destroy an asset of particular value and cause an imbalance in benefits among beneficiaries.

Decimation: The collapse of the stock market, for example, could impact a will that designates gifts of large amounts of cash or a valuable property to one person and results in very little for other beneficiaries.

Deportation: With immigration “reform” uncertain, the unanticipated deportation of a trusted employee, caregiver, or proposed executor could disrupt your plan.

Disposition: We’re talking here about your mortal remains and the need for instructions if you have a particular method in mind.

Digital Data: Online banking, automatic bill paying, websites, email, social networks, and hard drives are current examples of the digital world in which most, if not all, of us find ourselves. Most are password-protected and some are encrypted. Arrange for access by a family member, someone who holds your power of attorney, your named executor, or a trusted friend with instructions regarding any specialized content.

Distance: Consider replacing a trustee, executor, or power of attorney holder who is living too far away to provide meaningful assistance on a timely basis.

Domicile: If you move out of the state of Texas, you should have a local attorney review estate documents in light of the laws of that state. A move to a different city in Texas should not have any legal effect, though it could make it impractical or of little help to have guardians and holders of medical powers of attorney located in the former city.

Don’t Do It Yourself: This is a great way for you to complicate affairs so that survivors incur greater expenses—especially legal fees.

Thinking about death can be stressful. You will find that providing copies of this list to your clients is a good way to wrap up a meeting. It also provides you with an opening to remind clients that you are there to help them, their families, and their significant others. Try it yourself. You will not be disappointed. **TBJ**

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