

# THE BILLINGS BULLETIN



Law Office of Roger R. Billings, 2140 Professional Drive, Suite 120, Roseville, CA 95661  
 www.rbillingslaw.com rbillings@rbillingslaw.com (916) 786-8706

## Estate Plans Need Check-Ups, Too

By Roger R. Billings

Medical experts recommend health care check-ups every one to three years. *Estate plans* also need check-ups to stay healthy.

After setting up an estate plan, perhaps you imagined that you would never have to think about it again. Let your heirs worry about, right? Well, no, not if you want your plan to meet your goals. When you experience changes in your life or your family, or changes in your assets or in the law, your current plan may no longer do what you want. An estate plan must be kept up-to-date to achieve its purpose. Qualified estate planners try to anticipate changes in circumstances, but once a change actually occurs, the time has come to find out whether the original plan still does what you want.

### Getting Started

To begin an estate plan check-up, you may discover many needed changes through your own review. However, identifying some changes may require help from an attorney, and regular consultations with an attorney (at least every five years) should also be

*Pull out and review your documents. Do you still remember what you originally planned?*



part of your estate plan check-up. In addition, if any of the following circumstances apply to you, then the time for a check-up has already arrived.

### Successor Trustees and Other Fiduciaries

Do you still trust the person to whom you will entrust your estate when you are gone? If your executor, trustee, guardian or other fiduciary has moved away, died, or become less desirable as a person responsible for your estate or your health or as a guardian of your minor children, then perhaps you should make a change.

### Marital Status

Changes in marital status require that estate plans be updated. This may seem obvious, but it is surprising how frequently people fail to update their estate plans after divorce or marriage.

In the *Estate of Hermon*, John Hermon's will left his estate to his son, Curtis, and to the children of his wife, Suzanne. However, John and Suzanne's marriage ended in divorce, and six years later John died without updating his will. A family fight broke

out between John's son, Curtis, and the children of Suzanne, over the distribution of the estate. Family members dragged the dispute from court to court to court until Curtis finally prevailed as the sole heir of the estate. This was probably John's actual intent, but failing to express his intent in an updated will resulted in years of litigation and enormous wasted expense. When your family changes, so should your estate plan.

### Changes in the Law

When you consult regularly with an attorney, you can learn whether changes in the law require that your estate plan be updated. One example is the effect of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). EGTRRA increased the estate tax exemption (the amount of an estate that is exempt from estate tax) to \$1.5 million in 2005; and the exemption will continue to increase, to \$3.5 million in 2009, and in 2010, the exemption will be unlimited, effectively repealing the Federal Estate Tax. The catch is that in 2011 EGTRRA will expire, unless Congress intercedes. In April, the House passed a bill extending EGTRRA, but it looks unlikely that the Senate will act on the bill this year.

While EGTRRA has created a great deal of uncertainty in estate tax planning, it is clear that forthcoming changes in the law will require modification to many estate plans.

### More Reasons for Getting a Check-Up

Have you acquired investment real estate? Has your net worth increased significantly? While the Federal Estate Tax exemption is a moving target, updating your estate plan could still provide significant estate tax and income tax savings.

Have you started a business? Thirty percent of family owned businesses are passed on to the

*"Family members dragged the dispute from court to court to court."*

second generation and only ten percent are passed on to the third generation. Your chances of beating these odds are greatly enhanced if a business succession plan is part of your estate plan.

Have you moved to a different state? Have you acquired property in another state? You should have an attorney determine the effect of state to state differences in probate and succession laws on your estate plan.

### Making the Change

Your existing estate plan may effectively deal with new circumstances such that no change is needed to accomplish your goals. When a change is warranted, if it is simple, it may require nothing more than a short amendment to the trust or a codicil to the will. However, such an amendment is less desirable for more extensive changes. Drafting new estate plan documents that deal with your current circumstances can cost less and be more effective than subjecting an attorney to thoroughly reviewing and then revising your existing documents.

If the changes listed here apply to you, then updating your estate plan should be on your calendar. Further, this list is not exhaustive of all the reasons to update your plan. Thus, for a healthy estate plan, experts recommend a regular check-up.