

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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We have been sending out our quarterly newsletter for some 11 years. I recently visited with my staff (Cindy Lamb, Hope Butterfield, Danna West and Sherry Kingcaid) about stopping the print version and going with email. Ironically, within just a couple of days, I had folks who are on my mailing list, without me asking them, comment how they liked receiving it – when I told them of what I was considering, their reaction was decidedly negative. So, I will continue with the “snail mail” version!

Let’s talk about estate planning –more precisely, the importance of periodic reviews and, if necessary, updating/revising your estate plan. In my opinion, your Will, Statutory Durable Power of Attorney, Medical Durable Power of Attorney, and HIPAA Release (and if you have one, your revocable “living” trust) need to be reviewed at least every 3 years and, more often, if there has been a “significant life change”. What do I mean by a “significant life change”? Some that come to mind: a birth, an adoption, a death, or a divorce. Another change that can cause tremendous impact on an estate plan can be a change in the federal estate tax laws.

Let me give you a real life example of the potentially disastrous consequences of someone not periodically reviewing his or her Will. A married couple in 1992, when the estate tax exemption was \$600,000.00, signed Wills that provided as follows: “I leave the portion of my estate that is subject to federal estate taxes to a marital deduction trust of which my spouse is the beneficiary” and “I leave the tax free amount to my son”. Their intent was that the great majority of the estate of the first spouse to die would pass to the marital deduction trust for the sole benefit of the surviving spouse and that the much smaller amount, (the tax free amount which was \$600,000.000) would pass to their son. The husband died in 2014 when the “tax free amount” is \$5,340,000. His estate was worth, say, \$3,000,000. Guess what? The wife gets not one dime of the husband’s estate –because all of his \$3,000,000.00 estate is “tax free”. Instead, all of the husband’s estate passes to the son. The moral to this story: review your Will and revocable trust (if you have one) to make sure that changes in the federal estate tax code have not done severe damage to your original estate plan!

Another horror story – involving an estate that I handled in New Mexico several years ago. (By the way, I WAS NOT the lawyer who drew up this plan). A wealthy couple had one son. The father died first and his Will left everything to his wife. Their son, who was not married, had a Will that left all of his estate to his mother. The son died second. A few months later, the mother died. Her Will left all of her estate to the son – *but he had predeceased her!* And she did not have a “contingent beneficiary” –someone who would have been designated to take had he predeceased her. So, as a result, her estate passed to some 12 relatives, by the laws of intestate succession, some of whom were very, very distant relatives – who, for all intents and purposes, hardly even knew her!

A third horror story involving another estate that I have handled. The client, who was quite elderly, came into my office. He made it plain he did not like lawyers (so, what’s new?). He did not have a Will. **And he refused to do a Will.** His wife had predeceased him. He had no children or grandchildren. He had no brothers or sisters (or their descendants). He died “intestate” –that is WITHOUT A WILL! We have been involved in a “wild goose chase” trying to locate distant relatives of this gentlemen whose family immigrated from eastern Europe two generations ago–without much success. It appears that, more than likely, three fourths (3/4) of his estate **will “escheat” to the State of Texas** –all because he simply refused to do a Will.

As I have said before in prior newsletters, I recommend that a client have 4 documents and, in some cases, 5 documents, in his or her estate plan: a Will; a Statutory Durable Power of Attorney; a Medical Durable Power of Attorney; a HIPAA Release; and, in some cases, a Revocable “Living” Trust. But signing them and forgetting to review them on a periodic basis is not smart. They need to be examined to make sure they still reflect your wishes and the needs of your beneficiaries. As above mentioned, the tax laws may change that can destroy your original estate plan. The beneficiaries’ needs may change. Your desires for how your estate should be handled may change.

One other thing. I have changed my philosophy about talking to your beneficiaries about your estate

plan. (I used to be of the opinion that you should not talk to your beneficiaries about your estate plan – because you might decide to change it.) But I now believe, in most cases, it is better to sit down with your beneficiaries and discuss your estate plan. Talk about why you are doing what you are doing with your assets when you pass away. Talk about what your estate consists of. **Studies show that people generally don't do this for several reasons:** (1) they don't want to talk about dying; (2) they don't want to let their beneficiaries know what they are worth for fear it will stifle their work ethic; and/or (3) they are worried that their beneficiaries don't have sufficient financial acumen to be able to

handle the property which they will be left. But, I firmly believe that having these discussions will make for better family harmony and, that, I believe is vitally important – more so than anything else in my opinion!

If you are interested in having me review your estate plan, please call for an appointment. It might be one of the best things you can do for your loved ones as well as give you peace of mind!

That's it for now! Have a great Fall and pray for rain!

Dan Campbell



Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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