

Richard A. Courtney, CELA
Certified Elder Law Attorney
4400 Old Canton Road, Suite 220
Jackson, Mississippi 39211
601-987-3000 or 1-866-ELDERLAW
For more Articles, go to: www.elderlawms.com



When Is It Time to "Service" Your Estate Plan?

If you own a car, then you know it requires regular servicing in order to perform well and be reliable. More than likely, your car came with a recommended schedule for service, based on how many miles it has been driven. After a certain number of miles, you need to change the oil, replace the brake pads, rotate the tires, and so on.

If you have a newer car, you probably have an irritating dash light that comes on when it's time for service and stays on until the mechanic resets it. Either way, whether you pay attention to the odometer or rely on that dash light, it's pretty easy to know when it's time to service your car. And if you keep driving it without servicing it, it's a sure bet your car will let you down.

Like your car, your estate plan needs "servicing" if it is going to perform the way you want when you need it. Your estate plan is a snapshot of you, your family, your assets and the tax laws in effect at the time it was created. All of these change over time, and so should your plan. It is unreasonable to expect the simple will written when you were a newlywed to be effective now that you have a growing family, or now that you are divorced from your spouse, or now that you are retired and have an ever-increasing swarm of grandchildren! Over the course of your lifetime, your estate plan will need check-ups, maintenance, tweaking, maybe even replacing.

So, how do you know when it's time to give your estate plan a check-up? Well, instead of having **mileage** checkpoints, your estate plan has event checkpoints. Generally, any change in your personal, family, financial or health situation, or a change in the tax laws, could prompt a change in your estate plan. Use the list at the end of this newsletter to guide you.

It's a good idea to review your estate plan every year. Set aside a specific time every year (your birthday, anniversary, family gathering) to review it. Keep these events in mind each time you read through your documents. If you think a change may be in order, don't write on your actual document; contact your attorney. Most changes can be handled by simple revisions to your current will or trust.

Planning Tip: Like your car, your estate plan needs regular "servicing." Set aside a specific time every year (your birthday, anniversary, family gathering) to review it. Become familiar with it. Keep it current so it will perform the way you want when you need it.

What Do You Do with Your Estate Plan?

Think for a few moments about what would happen if you became incapacitated or died today. Would your spouse, family and successor trustees know what to do?

Would they know where to find your estate planning and health care documents? Do they know whom should be notified? Do they know what insurance you have and the benefits they can apply for? Do they know what assets you own and where they are located? Do they know who your attorney and accountant are? If you own a business, do they know what to do to keep it operating? Do they know whom to call if they need help?

You don't have to tell your family everything about your assets right now. But it is very important that they **know where to find this information when they need it**. So, organize it and let someone know where to find it. The point is to try and make things as easy as you can for your loved ones.

Give copies of your signed health care documents to your physician and designated agent. Keep the originals (titles, estate plan, health care documents) in one safe place like a fireproof safe or safe deposit box. (Be sure to add your successor trustee to your safe deposit box so he or she will have easy access.) You may also want to give a copy to your successor trustee; at the least, go over the main provisions with him or her.

Gifts...An Easy and Satisfying Way to Reduce Estate Taxes

If you have a sizable estate, you may want to consider giving some of your assets now to the people or organizations who will receive them after you die.

Why? First, it can be very satisfying to see the results of your gifts - something you can't do if you hold onto everything until you die. Second, gifting is an excellent way to reduce estate taxes because you are reducing the size of your taxable estate. (Just make sure you don't give away any assets you may need later.) And third, it costs you less in the long run.

One of the easiest ways to gift is through annual tax-free gifts. Each year, you can give up to \$13,000 each to as many people as you wish. If you are married, you and your spouse together can give \$26,000 per recipient per year. (This amount is now tied to inflation and may increase every few years.)

So if, for example, you have two children and five grandchildren, you could give each of them \$13,000 and reduce your estate by \$91,000 each year - \$182,000 if your spouse joins you.

You can also give an unlimited amount for tuition and medical expenses if you make the gifts directly to the educational organization or health care provider. Charitable gifts are also unlimited.

You do not have to give cash. In fact, appreciating assets are usually the best to give, because any future appreciation will also then be out of your estate. For example, if you want to give your son some land worth \$52,000, you can give him a \$13,000 "interest" in the property each year for four years.

As long as the gift is within these limits, you don't have to report it to Uncle Sam. Just the same, it's a good idea to get appraisals (especially for real estate) and document these gifts in case the IRS later tries to challenge the values. You should do this under the watchful eye of your attorney or tax advisor.

What if you want to give someone more than \$13,000? You can, it just starts using up your \$1 million federal gift tax exemption. If your gift exceeds the annual tax-free limit, you'll need to let Uncle Sam know by filing an informational gift tax return (Form 709) for the year in which the gift is made. After you have used up your exemption, you'll have to pay a gift tax on any gifts over \$13,000 (or whatever the annual tax-free amount is at that time). The gift tax rate is equal to the highest estate tax rate in effect at the time the gift is made. In 2009, it is 45%.

Which brings us back to reason number three. Even though the gift and estate tax rates are the same, it costs you less to make the gift and pay the tax while you are living than it does to wait until after you die and have your estate pay the estate tax. That's because the amount you pay in gift tax is no longer in your taxable estate.

Event Checkpoints for Your Estate Plan

You and Your Spouse

- You marry, divorce or separate
- Your or your spouse's health declines
- Your spouse dies
- Value of assets changes dramatically
- Change in business interests
- You buy real estate in another state

Your Family

- Birth or adoption
- Marriage or divorce
- Finances change
- Parent/relative becomes dependent on you
- Minor becomes adult
- Attitude toward you changes
- Health declines
- Family member dies

Other

- Federal or state tax laws change
- You plan to move to a different state
- Your successor trustee, guardian or administrator moves, becomes ill or changes mind
- You change your mind

Planning Tip: Many people have set up revocable living trusts to avoid the costs, delays and publicity of probate after they die. But all too often they do not change titles of their assets to the name of their trusts. This process is called "funding" the trust. If you have not funded your living trust, you have simply wasted your money. Any assets still titled in your name will have to go through probate - just what you were trying to avoid. Talk to your attorney about funding your living trust right away. And be sure to title new assets in the name of your trust as you acquire them.

For help in reviewing or revising your estate plan, or funding your living trust, call us today toll-free at 866-ELDERLAW(353-3752).