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ESTATE PLANNING CONSIDERATIONS FOR CHANGING FAMILY SITUATIONS

Changing family situations are among the most important and common reasons to review your estate planning documents. Of course, if a separation or divorce from your spouse is contemplated, it is even more imperative to review your existing estate planning decisions and immediately put into effect the changes you desire to address the changes in your life. The failure to make changes to your estate plan can lead to unanticipated and most likely undesirable results affecting the disposition of your assets at death and the persons who will make decisions on your behalf.

As a brief summary, you should review and make revisions to your estate plan as follows:

1. **Last Will and Testament.** If you have a will, review it immediately. If you do not have a will, this is a crucial time to execute a will. In any event, consider these matters:
 - Revoke any dispositive provisions for the benefit of the spouse
 - Confirm who should be the beneficiaries of your estate
2. **Choice of Fiduciaries.** Make sure you change those persons who will administer your estate and assets
 - Executor of Will---- name the person who you trust to carry out the desires expressed in the will
 - Trustee— the person who will administer and manage the assets set aside in a trust for a child or other beneficiary
3. **Provisions for Children.** If you have children (especially from a prior marriage), you should consider the following issues:
 - Naming a Trustee and successor Trustee for any trust for a child
 - Consider the ages at which the assets are distributed to a child free of trust
 - Include any special provisions for distributions for a child
 - Make sure the spouse cannot inherit if child dies before the trust terminates



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4. Naming a Guardian. One of the most important considerations you can set forth in writing is your choice of a guardian for your minor children in the event of the death of both parents.

- You can name your choice of a guardian for minor children in your will

5. Trust Agreements. If you have any trusts you have created or family members have created, review the trusts carefully with your counsel and focus on the following:

- Make sure the trust can be amended
- Review any provisions that reference a spouse or marriage
- Review the succession of trustees

6. Beneficiary Designations on Assets. A great deal of wealth transfers at death due to beneficiary designations on assets. These are most common for life insurance policies and retirement accounts but may also be on bank accounts (payable on death or POD designations) or brokerage account (transfer on death or TOD designations). For any such beneficiary designations:

- To the extent legally permissible, revoke beneficiary designations in favor of a spouse
- Make sure you follow through on changing beneficiary designations of accounts
- Make sure alternate provisions for minor children do not designate the children directly as beneficiaries but name a trust for the children

7. Financial Power of Attorney. A Power of Attorney is a document that permits you to designate someone to act as your Agent to handle financial matters in the event of your disability or incapacity.

- Designate a new Agent under a new Power of Attorney
- Revoke any power of attorney in favor of spouse

8. Advance Medical Directive. An Advance Medical Directive includes both a living will and a medical Power of Attorney.

- Again, designate a new agent to make medical decisions for you if you are unable to
- Revoke any existing medical power of attorney in favor of spouse
- Consider the provisions you want to include in a living will

9. Agent for Burial and Funeral Decisions. Virginia law permits you to name an agent to carry out your desires regarding your burial, cremation, or funeral arrangements.

- Without such a designations as to your wishes, family members may be left to argue among themselves

10. Inform Family Members of change in Marital Status. Although it may be difficult, at the appropriate time you should inform other family members of the possible change in your marital status.

- Your family members may have provisions in their estate plans for the benefit of your spouse that they will desire to revoke or change
- Your family members may have named your spouse as a trusted fiduciary in their estate documents

Of course, this memorandum is simply a brief summary of some of the decisions you need to consider. Any changes in your estate plan should only be made after reviewing your present desires and assets with an estate planning attorney.



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