



LUKINOVICH
A PROFESSIONAL LAW CORPORATION

Lukinovich, APLC has law offices in Metairie and Baton Rouge, Louisiana. Our areas of practice include estate planning, wills and trusts, business planning, wealth preservation, probate administration and charitable gift planning.

Our mission is to devote our best skills, efforts and resources to advise our clients enthusiastically and creatively to accomplish their business, tax, family and estate planning goals and objectives, and we offer superior personalized attention with the utmost regard for privacy and confidentiality.

Learn more about our areas of practice online:
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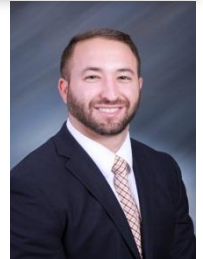
Suggested Reading:

From Success to Significance

By Lloyd Reeb

(The author encourages all of us to consider the true legacies to leave behind.)

YOUR 2019 ESTATE PLANNING CHECKLIST



Patrick Gabb

After signing your estate planning documents, you likely placed them in a safe deposit box and quickly forget about them. However, this is not something that you can forget about. Our main goal as estate planning attorneys is to help you achieve the most efficient and effective way to distribute your estate to love ones. Nevertheless, we cannot always satisfy this goal without help from you. Our firm recommends that you review your estate planning documents every five years or after a major life event (discussed more below).

When you hear the words “estate planning,” the first thought that comes to your mind is likely writing a will. Although, a will probably is the most important estate planning document, there are three other basic estate planning documents that should be executed. Estate planning attorneys sometimes refer to the will and these documents collectively as a “will package.” A will package consists of the following documents: **(1) Last Will and Testament, (2) Medical Power of Attorney, (3) General Power of Attorney and (4) Living Will Declaration.** We strongly recommend that you review your estate planning documents in order to ensure that you have executed all four essential documents (i.e. a will package).

CHECKLIST

In this edition of Lukinovich Lagniappe, we would like to provide you with a checklist of questions (with brief explanations) that you should ask yourself when reviewing your estate planning documents. Here are the following questions:

1) **Are my will package documents properly signed and dated?** Our firm requests that you review your will package documents to confirm that each document is signed, dated and notarized (when applicable). Under Louisiana law, a notarial

testament must be executed in accordance with the formalities of Louisiana Civil Code Articles 1577 through 1580.1.¹ Louisiana Civil Code Article 1577 states specifically that the will must be dated and the testator must sign at the end of the testament and at the end of each separate page.² Due to the strict form requirements for notarial testaments, our firm strongly recommends that you review your will to confirm that your will is dated and signed at the bottom of each page and at the end of document.

- 2) **Are any individuals named in my will or powers of attorney deceased?** When reviewing your will and powers of attorney, you need to ensure that all beneficiaries, trustees, executors and agents named in your documents are still alive. This simple task will help guarantee that your estate is distributed according to your plan.
- 3) **Is there someone that you would like to add to one of your will package documents?** Has there been a birth or adoption of a child or grandchild? If so, you may want to revise your will to include this person as a beneficiary.
- 4) **Is there someone that you would like to remove from one of your will package documents?**
 - a. Has there been a change in relationship with someone named in your will package documents? For example, a sibling that you haven't spoken to since executing the document.
 - b. Has a beneficiary had a change in his or her financial situation? For example, a beneficiary who won the lottery or has become extremely successful.
 - c. Has a trustee, executor or agent lost his or her ability to handle the responsibility? Here are some examples: an executor named in your will now lives far away; a trustee named in your will no longer has the capacity to administer the trust; or an agent named in your powers of attorney can no longer handle the responsibility or a child of yours now has attained an age sufficient to handle that responsibility.
- 5) **Has there been a change in your marital status since you executed your will package documents?**
 - a. Have you been divorced since the execution of your will? Under Louisiana Civil Code Article 1608, "[r]evocation of a legacy or other testamentary provision occurs when the testator...is divorced from the legatee after the testament is executed and at the time of his death, unless the testator provides to the contrary. Testamentary designations or appointments of a

¹ La. Civ. Code Art. 1576.

² La. Civ. Code Art. 1577.

spouse are revoked under the same circumstances.”³ In other words, any testamentary provision naming your divorced spouse as a beneficiary, trustee or executor is revoked unless you specifically indicate your desire to include the divorced spouse as a beneficiary, trustee or executor despite the divorce.

- b. Were you single at the time you executed your will package documents and now are married? If you now are married, you may want to change your will package documents to name your spouse as a trustee, beneficiary, executor or agent.

6) Has there been a substantial increase or decrease in the value of your estate?

- a. Has there been an acquisition or disposition of a significant asset? Here are some examples: a successful or failed large investment; a large inheritance from a wealthy relative; or a sale of a partnership or membership interest in a business.
- b. Do you believe that there is impending good fortune ahead of you? For example, you have a promising investment or successful business that could sell for a large profit. If you fall under this category, it is very important that you review your estate planning documents because your estate may become taxable upon the receipt of your good fortune.⁴

7) Have you changed the beneficiary designations on your 401(k), IRA, pension or life insurance plan? The items listed in the previous sentence are non-probate assets, and therefore, they are not controlled by your will. A non-probate asset will pass along to the beneficiary named in the contract. For example, John owns an IRA worth \$1,000,000, and he names his wife, Jane, as the sole beneficiary. Upon John’s death, Jane will receive \$1,000,000 from the IRA. Now, let’s assume that Jane predeceased John. John changes his IRA to name his two children, Paul and Peter, as the beneficiaries. Upon John’s death, Peter and Paul each will receive \$500,000. If John did not want Peter and Paul to inherit anything else from him, he would have to make sure that Peter and Paul are not named as beneficiaries in his will. Thus, John would have to review and revise his will to ensure that Peter and Paul do not receive any other assets from him.

8) Has there been a change in tax laws? On December 22, 2017, President Donald Trump signed the Tax Cuts and Jobs Act (“TCJA”)⁵. Under the TCJA, the estate and gift tax exemption amounts were doubled from the previous year. On January 1, 2018, the estate

³ La. Civ. Code Art. 1608.

⁴ Under Internal Revenue Code §§ 2010 and 2631, for 2019 the estate, gift and generation-skipping tax exemption amount is approximately \$11,400,000 per spouse.

⁵ Tax Cuts and Jobs Act.

and gift tax exemption was increased to approximately \$11,200,000 per spouse.⁶ The doubling of the estate and gift tax exemption is important because many wills are drafted using formula clauses. Due to the change in tax law, the formula clauses in your will may lead to unintended tax consequences. Here's an example of a common formula clause: "I leave the first portion of my estate in Trust to my children, Ryan and Madeline, in the amount of my taxable estate which is equal to the 'Applicable Exemption Equivalent' of the maximum Applicable Credit Amount then in existence at the time of my death as provided in Internal Revenue Code, Section 2010.... I leave the second portion of my estate, being the balance of my residuary estate, to my spouse, outright and in full ownership." Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax applicable exclusion amount was increased to \$1,000,000.⁷ In 2002, using the aforesaid formula, the Trust set up for Ryan and Madeline would receive approximately \$1,000,000 and the surviving spouse would receive the balance outright. However, under the TCJA in 2018, using the same formula, the Trust set up for Ryan and Madeline would receive approximately \$11,200,000, and the balance, if any, would pass outright to the surviving spouse. Consequently, if the decedent's estate was not worth more than \$11,200,000, the surviving spouse would not receive anything. This was likely not the intent of the testator at the time of execution, but because of a change in tax law, it is an unintended consequence. Our firm strongly advises you to review your will for formula clauses, so an unintended consequence like this does not happen to you.

9) Does a descendant now qualify as a forced heir?

- a. Has a descendant been involved in a serious accident that has rendered him or her permanently disabled? If so, this person likely meets the requirements of a forced heir defined in Louisiana Article 1493.⁸ If you believe that one of your descendants now qualifies as a forced heir, he or she will be entitled to a certain portion of your estate (i.e. the forced portion or legitime). However, this issue can be addressed by adding new language to your will.
- b. Has a descendant recently been diagnosed with bipolar disorder? In recent years, Louisiana Courts have held that bipolar disorder may be "an inherited, incurable disease or condition" that may render a person incapable of caring for his or her person or administering his or her estate in the future.⁹ Due to the broad interpretation of these Louisiana Courts, a child of yours who is diagnosed with bipolar disorder likely will be

⁶ Under Internal Revenue Code §§ 2010 and 2631, for 2019 the current estate, gift and generation-skipping tax exemption amount is approximately \$11,400,000 per spouse.

⁷ Economic Growth and Tax Relief Reconciliation Act of 2001.

⁸ La. Civ. Code Art. 1493.

⁹ *In re Succession of Foreman*, 37 So.3d 1081, 2009-1455 (La.App. 3 Cir. 5/5/10); *In re Succession of Ardoin*, 957 So.2d 937 (La.App. 3 Cir. 5/30/07).

considered a forced heir. Therefore, without careful drafting, this child will be entitled to a certain portion of your estate outright.

CONCLUSION

If you believe that one or more of these issues apply to you, we recommend that you reach out to an estate planning attorney as soon as possible. If you have any questions for our firm regarding this matter, please contact Lukinovich, APLC at 504-818-0401.



**4415 Shores Drive
Suite 200
Metairie, LA 70006
(504) 818-0401**

**717 Highlandia Drive
Suite 201
Baton Rouge, LA 70810
(225) 756-5454**

www.lukinovichlaw.com

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