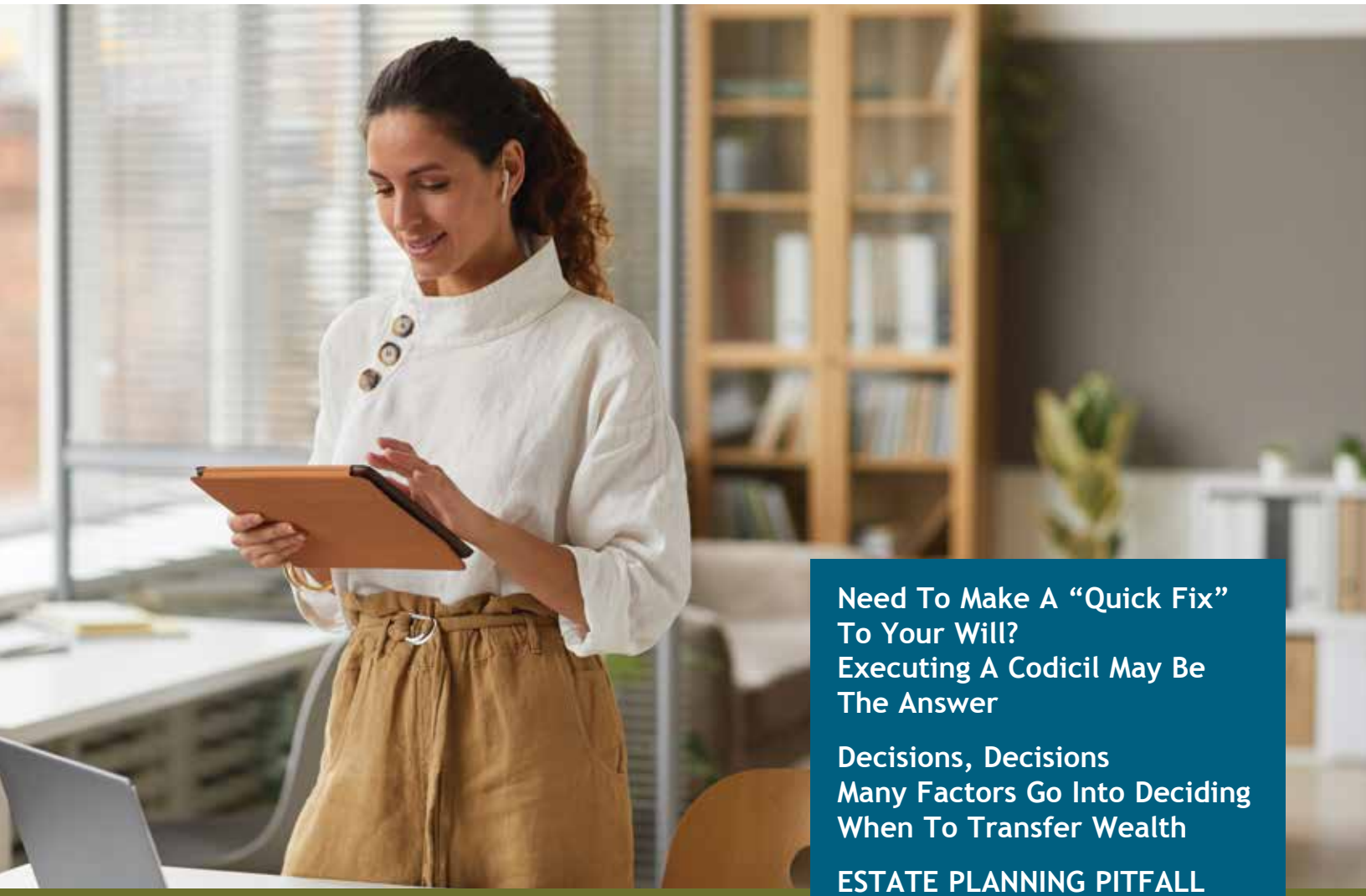
INSIGHT ON ESTATE PLANNING



Need To Make A "Quick Fix" To Your Will? Executing A Codicil May Be The Answer

Decisions, Decisions Many Factors Go Into Deciding When To Transfer Wealth

ESTATE PLANNING PITFALL

You've Overlooked Digital Assets In Your Estate Plan

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Weinstock Manion
A LAW CORPORATION

1875 Century Park East • Suite 2000
Los Angeles, CA 90067
T: (310) 553-8844 • F: (310) 553-5165
www.weinstocklaw.com

PRESERVING YOUR LEGACY

We welcome the opportunity to discuss your needs and help you meet your estate planning and wealth transfer objectives.

Please call us at (310) 553-8844 to let us know how we can be of assistance.

Need To Make A "Quick Fix" To Your Will?

Executing A Codicil May Be The Answer

For most people, the first step in estate planning is to create a legally enforceable will. If you already have a will in place, consider yourself ahead of the game, but you're far from finished. If, for example, your circumstances have recently changed, your will may be in need of a "quick fix."

A Supplement To An Existing Will

If you need to make a change to your will does that mean you have to completely re-write it? Not exactly. A simple "codicil" may suffice for a minor change. A codicil is a legal document that's treated as a supplement to an existing will. When your will is subjected to probate, so is the codicil.

Bear in mind that codicils were more prevalent in "days of yore" before personal computers. It was more time-consuming and costly than it is today to replace a will. With a codicil, you only had to address one or two points — not the entire last will and testament. This is no longer a significant factor.

Furthermore, adding a codicil could create confusion relating to other parts of the will. And it's often more convenient for everyone in the family to rely on a single document. As a result, you may redo a will instead of adding a codicil. Nevertheless, using a codicil remains the preferred approach for some people, especially for relatively small changes.

To be legally binding, a codicil must be handled with the same legal formalities as a will. Therefore, it's best to have it prepared by a qualified attorney.

Reasons For Updating Your Will

What situations may trigger a need for an update of a will through a codicil or rewrite? Common examples include a:

Birth or death in the family. Maybe you didn't have any children or grandchildren when your will was initially drafted. Now that you do, you may want the newest members of the family to share in your estate. Or perhaps a family member you previously named in your will has passed away. You'll want to remove his or her name from your list of beneficiaries and possibly include other family members who weren't previously named in your will.

Change in executor. In some cases, you may have to select a new executor (or guardian or trustee). This may occur if the one you named in your will has died or become incapacitated and you haven't made adequate contingency plans. In other instances, you may simply rather assign the job to someone else.

Revalidation. Suppose the witnesses who can verify the signature on your will are no longer alive or can't be located. When it's required, a codicil attested to by new witnesses can revalidate the will.

Tax law change. A new or revised tax law may require you to modify certain provisions to take maximum advantage of the latest rules. In addition, there's significant uncertainty concerning the federal gift and estate tax exemption ($12.06 million in 2022), which is scheduled to revert to its pre-2018 level of $5 million (plus inflation indexing) after 2025.

Other estate tax law changes are being contemplated by some members of Congress. When possible, revise your will to provide maximum flexibility.

What To Include In A Codicil

For starters, a codicil must have identifying information, including your full legal name, address, the date of the codicil, and a statement indicating that you're of sound mind and not being coerced by someone else. Explain what parts of the will are affected. Use full legal names when referring to beneficiaries, specify dollar amounts or percentages, and describe any property in detail.

To be legally binding, a codicil must be handled with the same legal formalities as a will.

Furthermore, the codicil should state that its provisions supersede what you've written in your will and that all parts of the will not affected by the codicil remain in effect. Sign the codicil and have it witnessed according to state law. Finally, keep it in a secure location along with your will.

Get It Done

Life happens and a lot can change in the years since you've first drafted your will. Your estate planning attorney can help draft your codicil. •

Decisions, Decisions

Many Factors Go Into Deciding When To Transfer Wealth

A critical estate planning decision is whether to transfer wealth during your lifetime or keep your assets in your estate and transfer your wealth to loved ones after your death. Some say it would be wise to make gifts now to take advantage of the inflation-adjusted $12.06 million gift and estate tax exemption. (Without action from Congress, the exemption amount will be halved after 2025.)

Others caution that giving away wealth during one's lifetime isn't right for everyone.

Let's take a closer look at factors to consider when making the decision.

Carryover Tax Basis And Stepped-Up Basis

The primary advantage of making lifetime gifts is that by removing assets from your estate you shield future appreciation from estate taxes. But there's a tradeoff: Your beneficiary receives a "carryover" tax basis — that is, he or she assumes *your* basis in the asset. If a gifted asset has a low basis relative to its fair market value (FMV), then a sale will trigger capital gains taxes on the difference.

An asset transferred at death, however, receives a "stepped-up basis" equal to its date-of-death FMV. That means the recipient can sell it with little or no capital gains tax liability. So, the question becomes, which strategy has the lower tax cost: transferring an asset by gift (now) or by bequest (later)?

The answer depends on several factors. They include the asset's basis-to-FMV ratio, the likelihood that its value will continue appreciating, your current or potential future exposure to gift and estate taxes, and the recipient's time horizon — that is, how long you expect the recipient to hold the asset after receiving it.

3 Examples

To keep things simple, let's always assume that you and your heirs are subject to tax on capital gains at a rate of 23.8% (the top capital gains rate of 20% plus the 3.8% rate on net investment income) and that the gift and estate tax rate is 40% of amounts in excess of the applicable exemption.

Example #1. You have $8 million in publicly traded securities with a $3 million basis and $2 million in other assets. You haven't used any of your exemption amount. If you give the securities to your son, who sells them immediately, he'll owe $1.19 million in capital gains taxes [23.8% × ($8 million - $3 million)]. Suppose, instead, that you hold the securities for life, that the inflation-adjusted exemption in the year you die is $12 million, and that the securities' value has grown to $13 million. If your son inherits the securities, he'll receive a stepped-up basis of $13 million and can sell them tax-free. Your estate will be subject to estate taxes of $400,000 [40% × ($13 million - $12 million exemption)]. In this scenario, holding the securities is the better strategy from a tax perspective.

The primary advantage of making lifetime gifts is that by removing assets from your estate you shield future appreciation from estate taxes.

Example #2. Same facts as in the first example, except that your son plans to hold the securities for life rather than sell them. In this scenario, gifting the securities now is the better strategy because, by holding them, your son avoids capital gains taxes

and there's no estate tax because all future appreciation is removed from your estate.

Example #3. Again, the same facts as in the first example, except that when you die the exemption has dropped to $6 million, so your estate is subject to estate taxes of $2.8 million [40% × ($13 million – $6 million exemption)]. In this scenario, gifting the securities now results in a substantially lower tax bill, even if your son sells them immediately.

Other Real-World Factors

The previous three examples are highly simplified to illustrate the decision-making process. In the real world, many other factors may affect the overall economics, including an asset's income-earning potential, the applicability of state income and estate taxes, and potential changes in capital gains and gift and estate tax rates. Contact your estate planning advisor for more information. •

ESTATE PLANNING PITFALL

You've Overlooked Digital Assets In Your Estate Plan

Traditionally, an estate plan addresses the tangible assets you own, such as cash and securities, investment real estate, vehicles, and your house. But this is 2022. Increasingly, people are living in a digital world, where prized possessions include online bank accounts, social media accounts and other significant items protected "in the cloud."

It's not enough to just cover tangible personal property in your estate plan. Don't neglect your digital assets.

A better approach is to be proactive. First, collect all the relevant information on your family's behalf. This includes a list of email addresses, usernames and passwords. Because you're periodically required to change passwords for security purposes, try to keep this list updated. Consider using a password manager program for convenience.

Next, address the list of your digital assets in your will and trust documents. Significantly, make sure you assign authority to manage the assets of financial accounts and provide for their ultimate distribution. In addition, determine who'll be the beneficiaries of digitally stored photographs or music and other

items of sentimental value. You don't want to have your kids fighting over these when you're gone.

And don't stop at your will and trusts. Incorporate this concept into a durable power of attorney (POA). If you don't already have a POA in place, now's as good a time as any to create this legal document. It enables a designated party to act on your behalf in a multitude of situations.

Finally, as with other components of your estate plan, review the documents relating to your digital assets on a regular basis.

Weinstock Manion

PRESERVING YOUR LEGACY

For over 60 years, the attorneys and staff of Weinstock Manion have focused on providing personalized, high-quality legal counsel in the following practice areas to individuals, business principals, beneficiaries, fiduciaries, and charitable organizations, in a wide range of industries, including real estate, entertainment, and sports:

- Estate Planning
- Wealth Transfer Planning
- Estate and Trust Administration
- Estate and Trust Litigation
- Business Succession Planning
- Charitable Planning and Family Foundations

Comprehensive Estate Planning Services

Working with our clients' other trusted advisors, our team of specialized attorneys and paralegals create and implement comprehensive, creative and practical estate plans with the goals of maximizing wealth transfer in accordance with our clients' wishes and reducing taxation.

Estate and trust administration can have significant financial consequences for both current and future beneficiaries. In an effort to minimize income and estate taxes while maximizing estate and trust income for beneficiaries, our process involves extensive collaboration between our estate planning, taxation and transactional attorneys.

Weinstock Manion's litigators represent both fiduciaries and beneficiaries in estate and trust disputes. Our litigators are skilled at handling claims for breach of fiduciary duty, beneficiary disputes, disputes regarding the validity of wills and trusts, undue influence and all aspects of conservatorships and guardianships.

For many clients, ensuring the future of their family business through a well-structured succession plan is an essential component of their estate plan. Our team of transactional, tax and estate planning attorneys work with our clients' other trusted advisors to develop plans for retirement, management transition and liquidity events.

Supporting charitable causes is important to many of our clients. We help our clients support the causes they are passionate about in a tax-efficient manner through thoughtful charitable planning, including the creation of family foundations.

At Weinstock Manion we understand that significant wealth can lead to complex personal and financial issues that may result in family conflict. Our goal is to help implement wealth transfer plans that minimize potential conflicts while promoting enduring legacies for generations to come.

We invite you to explore our team and services, and to contact us to learn more about how we may collaborate to preserve your legacy.