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Dear Clients and Colleagues:

The holiday season brings thoughts of the New Year, with reflections on recent changes and resolutions for the future. During this season of reflection and planning, consider the effect of life changes on your estate plan. If it has been more than a few years since your living trust or will was prepared, then changes in your family situation, your assets or the laws could render your current documents obsolete. When my clients review their dated documents, many of them are unhappy to learn that changes in their circumstances could bring unintended consequences.

When You Have No Estate Plan

If you have no will or living trust, the California Probate Code provides an estate plan for you! However, would you choose for your children – all of them, together – to administer your estate after your death? If you die before your spouse, would you want your estate divided between your children and your spouse – regardless of what assets your spouse may need for living expenses? Would you want your children to receive their portion of your estate outright – for their unrestricted disposition – at age 18?

If your answer to any of these questions is "No!" then create your own estate plan without delay. If any of your friends would answer "No!" encourage them to see an advisor to create their own estate plan.

When You Have an Estate Plan

Even folks who have executed estate planning documents may find that their plan is out of date and does not reflect their current situation. Following are some common events that can significantly impact an estate plan:

1. Changes in Your Family and Your Family Situation.

<u>Marriage or long-term committed relationship</u>. When you marry, California law mandates a portion of your estate that goes to your new spouse – even if you did not intend that distribution. Your existing living trust and your will must be updated to refer to your new spouse, even if you make no gift. In addition, most spouses prefer to name each other as Executor, Agent under their Durable Powers of Attorney, and certainly as Agent under Advance

Health Care Directives. If these documents reflect your former Agents instead of your spouse, confusion will result in the event of your incapacity or death.

The development of a long-term, committed unmarried relationship brings similar questions. You may want to provide for your new partner in your estate plan (or not). But if your documents are not updated, no one can determine whether the omission of your partner was intentional or inadvertent. If you are incapacitated, you may want your partner to make decisions about your finances or your health care, rather than another person.

Separation or divorce. When you have separated from or divorced a spouse or terminated a long-term unmarried relationship, it is even more important to update your estate planning documents. Although California statutes eliminate the right of a divorced spouse to be a beneficiary or act as an Executor, there are no similar statutes in the event of separation prior to divorce. Update your Durable Powers of Attorney and Advance Health Care Directives promptly upon separation, because sometimes a final divorce decree takes a considerable amount of time. Legal restrictions prevent changing the title of any marital assets, such as investment accounts and beneficiary designations, without agreement of both parties. However, you still can revoke your current trust and create a new will.

Similar considerations apply to the termination of a long-term relationship. There are no legal restrictions on changing the title of assets or beneficiary designations. However, any documents naming your former partner as successor Trustee, Executor, Agent under your Durable Power of Attorney, or Agent under your Advance Health Care Directive should be changed without delay. In addition, you may want to revoke any bequests you have made to your former partner.

Death of spouse or domestic partner. In the unfortunate circumstance that a spouse or partner has passed away, your estate plan may be affected. Usually estate documents provide for successor Trustees or alternate Executors or Agents, but sometimes no alternate is named. Each of those roles should be filled by another trusted person. In addition, the death of your spouse or partner may prompt you to change the beneficiaries of your other assets.

Changes for child or grandchild. Changes in the circumstances of your children or grandchildren, such as birth, adoption, maturity, marriage or divorce, may prompt you to think differently about potential gifts to them. Certainly the birth or adoption of a child is cause for celebration – and California statutes specify an automatic share of your estate for a child not mentioned in your will or trust. You may or may not agree with the statutory share. Instead, you should identify your new family members and specify the share for each, as well as whether the share will be given outright to the child or held in trust. As your children reach the age of majority at 18 years, provisions for them made years ago may no longer be appropriate for their circumstances. In addition, provisions made before your child's marriage or divorce may need to be updated in light of this change in circumstances.

<u>Death of child or other beneficiary</u>. The death of a child or other significant beneficiary may prompt you to re-think some of the distribution provisions of your estate. Would other beneficiaries receive some portion of the original beneficiary's share?

<u>Serious illness or incapacity of beneficiary</u>. Your beneficiaries, such as your spouse, domestic partner, or child, may have legitimate need for an additional portion of your estate. On the other hand, perhaps a distribution from your estate could compromise their receipt of public assistance due to disabilities. If an immature or disabled beneficiary will receive a significant portion of your estate, consider whether that share should go into a trust for the beneficiary's benefit. In some circumstances, people should not be responsible for managing their finances. Many alternatives are available for assisting such beneficiaries, including sprinkling trusts or special needs trusts, with other family members, professional fiduciaries or financial institutions responsible for management of the funds.

<u>Significant change in relationship with beneficiary</u>. Folks often give certain people special gifts, or the remainder of an estate, based upon a special relationship. Over time, relationships change. If your estate plan does not reflect your current relationship with your various beneficiaries, it should be updated.

<u>Significant change in health</u>. If your health has deteriorated over time, your documents may need to be revised to reflect your current physical limitations. Sometimes, clients make arrangements for family members or professionals to take an increasing role in managing aspects of their finances as their interest or ability to handle their finances wans.

<u>Change in relationship with trusted fiduciaries or their death.</u> Who have you named as successor Trustees, as Agents or as Guardians for your children? Are they still part of your life? Are they still good choices for the roles you have selected in your estate plan? Perhaps other friends or family members may now be better choices. Consider whether a professional fiduciary or a financial institution may be an option.

2. Changes in Your Income or Financial Status.

<u>Employment affecting income or assets.</u> Your income may have increased with generous bonuses or stock options, or you may have retired and reduced your expenses or simplified your financial life. Either situation could impact the provisions you have made for your spouse or beneficiaries.

<u>Economic circumstances</u>. If the size of your estate has significantly increased (perhaps with an inheritance) or decreased (with market losses) since your documents were last reviewed, you may want to re-align your gifts to certain beneficiaries. Similarly, if the estate of a beneficiary has significantly increased or decreased, you may consider some changes in your own gift.

Business interests. You may have formed or invested in new partnerships or corporations or started your own consulting business upon retirement. On the other hand, your business entities may have dissolved or been sold or your interest in them may have been redeemed. Not only should these changes be documented properly, but new or different assets could require different treatment in your estate documents. All of your accounts and business interests should be in the title of your living trust.

Specific assets mentioned in will. You may have provided that specific items of tangible personal property would go to certain individuals. Over time, those items may have been sold or given to the intended recipient – or perhaps given to someone else! These lists should be kept up to date to avoid disputes upon your death.

Retirement, approaching retirement age or nearing age 70. Age 70 is significant for several reasons – most folks are retired by that age, they look to their investments for a greater portion of their living expenses, and they must plan for taking required minimum distributions from their retirement funds. Lifestyle changes often bring adjustments in an estate plan.

3. Changes in Tax, Federal or Local Laws.

Estate tax exemption rates. Many estate documents created prior to 2006 were based upon a low federal estate tax exemption rate, compared to the current rate. As a result, many of these documents require the creation of two or more subtrusts upon the death of the first spouse to die – solely for tax purposes. With the increase in the estate tax exclusion amount to nearly $5.5 million per person, the creation of these sub-trusts adds an unnecessary level of administrative burden and expense. Older documents can be amended to eliminate the creation of unnecessary trusts.

Distributions of retirement plans. In 2001 and 2002, the IRS issued regulations on the distribution of retirement plans that gave guidance on tax-efficient ways to pass retirement assets to beneficiaries. In many cases, these assets can now be distributed to beneficiaries outright, or assets can be directed to less mature beneficiaries through conduit or see-through trusts. Review any beneficiary designations executed long ago to ensure they are still optimal for your estate.

Advance Health Care Directives. These documents permit you to designate an Agent to make your health care decisions, in the event you are in a coma or are otherwise unable to communicate your own health care wishes. Until recently, California statutes referred to health care directives as Durable Powers of Attorney for Health Care and Natural Death Act Declarations. Some older documents may even have expired under former laws limiting the duration of their effectiveness. In the new Advance Health Care Directive, you appoint your health care agent, and you also can communicate your choices regarding withdrawal of life support or using life-prolonging measures. You can specify your wishes regarding organ donation and the disposition of your remains. If you have made decisions regarding these issues, your Advance Health Care Directive should be updated to reflect your wishes.

Durable Powers of Attorney for Assets. A Durable Power of Attorney for Assets appoints an Agent to handle your financial matters, including tax matters, real estate operations and your investments. These appointments can be effective immediately upon signing, or they can take effect only upon your incapacity. If your existing Durable Power of Attorney takes effect only upon your incapacity, changes in your health or mobility may limit your options. It maybe more convenient for you or your Agent if the Durable Power of Attorney is effective immediately, even if you have not become incapacitated.

Additional strategies to reduce estate tax. Your estate may have grown during the last few years, perhaps because the economy has rebounded or perhaps your children are now out of college. You may consider creating an irrevocable life insurance trust to provide cash for the payment of estate tax. Your sole proprietorship may have grown into a flourishing business that would benefit from the creation of a limited liability company or an S Corporation. You may be ready to gift portions of your business to family members and want to take advantage of the gift tax benefits of a limited liability company. Sometime, clients create a personal residence trust to ensure that the family home will pass to their children in the most tax efficient manner.

Whatever your family or circumstances, they change over time. Just as no estate plan should be a “one size fits all” plan, no estate plan will always apply to a family whatever changes occur. In the same way that you update your investment decisions and your health care choices, periodic review and updates of estate documents are essential.

If you have any question about the impact of your estate documents on your current family and financial circumstances, please do not hesitate to contact me.

Very truly yours,

ARCHER NORRIS

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