Is Your Estate Planning Up To Date?

Take this simple test to see if it is.

	Don't Know	No	Yes
1. Have you prepared a will or a trust?	☐	☐	☐
2. If you have done a will or trust, has it been reviewed in the last two years?	☐	☐	☐
3. Are all of your heirs over the age of 21 and financially responsible?	☐	☐	☐
4. Are you *absolutely certain* that your assets will not be subject to probate?	☐	☐	☐
5. Do you have assets titled jointly with a child or children, or someone else?	☐	☐	☐
6. Does your current plan provide your heirs with asset protection, divorce protection, and lawsuit protection?	☐	☐	☐

1. Have you prepared a will or a trust?
Without proactive planning, you are relying on the state legislature to determine how your assets pass, to whom they pass, and when they pass. In addition to having potentially undesired results, this is perhaps the most costly and time consuming means of passing your assets to your loved ones.

2. If you have done a will or trust, has it been reviewed in the last two years?
Even assuming that there have been no family or financial changes since your plan was last reviewed, there have been multiple and significant tax law changes since 2001. An out-of-date estate plan is perhaps worse than no estate plan at all. Our experience is that people view estate planning as an event rather than a process. Keeping your plan current is vital to achieving the goals you set out to accomplish.

3. Are all of your heirs over the age of 21 and financially responsible?
Under state law, children inherit property no later than age 21 *without restriction*. Proper planning is crucial to prevent an heir from squandering his or her inheritance, or worse, from causing harm to himself or herself.

4. Are you *absolutely certain* that your assets will not be subject to probate?
We encourage you to make a list of each asset you own and identify how each asset is going to avoid probate. Assets owned as "joint tenants with rights of survivorship," assets owned in the name of a trust, and assets that pass by beneficiary designation (such as IRAs, life insurance, etc.) will avoid probate. Everything else is subject to probate. (Also, note that assets owned jointly are typically subject to probate upon the death of the last joint tenant.) Probates can be costly and typically require twelve (12) to eighteen (18) months from the date of death to conclude.

5. Do you have assets titled jointly with a child or children, or someone else?
Holding assets jointly with someone other than a spouse is quite common, but has some potentially devastating consequences of which most people are unaware. A creditor of a joint tenant can take the *entire asset* to satisfy the creditor's claim. A creditor would include a divorcing spouse, judgment creditor, or business creditor. Additionally, problems can be created if joint tenants die in the wrong order.

6. Does your current plan provide your heirs with asset protection, divorce protection, and lawsuit protection?
The most common means of providing for heirs is with outright distributions. By doing so, however, the inheritance becomes subject to the creditors of your heirs. In addition, if you have an illness which requires long term care, your assets are subject to being depleted without an asset protection trust.

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If you answered "No" to any of the above questions or "Yes" to #5, you should make an appointment to speak to an attorney about your estate plan.

7. Is this your first marriage? ☐ ☐ ☐

Second or subsequent marriages present unique planning issues, particularly if both spouses have children from a prior marriage. Proper planning is critical to prevent undesired results.

8. Have you designated an agent to make health care and financial decisions for you if you become incapacitated? ☐ ☐ ☐

If you are incapacitated, an agent must be designated to act on your behalf. If you do not have a durable power of attorney or revocable living trust which appoints a successor to handle your medical and financial affairs, your loved ones will have to petition the Court for the appointment of a conservator to make decisions on your behalf.

If you answered "No" to any of the above questions or "Yes" to #5, you should make an appointment to speak to an attorney about your estate plan.