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**Wills, Trusts and Estates
Corporate and Business Law**



Does Your Will Need Revising?

Changes in a person's life over a ten year period can undercut the effectiveness of the best estate plan. Children can turn into terribly irresponsible young adults. Juveniles can become surprisingly responsible citizens. Elderly parents can become financially dependent upon their adult offspring. Baby boomers can inherit a few million dollars. All these things will happen in the next decade to somebody.

I recommend to my clients that they pull out their estate planning documents every three to five years, read over them and just think about it again. With everything else in life there is no way a normal person can remember all of the details after a few years.

Read up on the latest changes in the field through articles in publications like Money Magazine or The Wall Street Journal. Sign up for my email newsletter. I send out new articles in between Web site updates and cover topics inspired by recent developments in the law or cases I have been handling recently.

A few years ago I had a flurry of probate files which were based on wills done out-of-state and/or back in the '80's. The wills presented issues that made the probate or estate administration more time-consuming. For example, attaching an affidavit to the will, signed by the Testator and the witnesses is standard procedure in Georgia. When it is missing, or in a form not accepted in Georgia because it uses another state's format, we have to find at least one of the witnesses and obtain sworn "Answers to Interrogatories" from the witness before the will can be probated.

I have seen plenty of wills from Florida and I don't think a single one of them has waived the requirement for an inventory, appraisal and final return. That causes extra work for the Executor which usually does not add anything to the quality of the estate administration and increases the legal costs. So anyone with a perfectly nice set of documents for Florida, after moving to Georgia probably needs to update their documents.

Then there are the never-ending changes in the tax law. In recent years a majority in each house of Congress has voted to permanently repeal the Federal Estate Tax, known to its critics as the Death Tax. You would think that, in a system of representative government, the bill would have been signed into law by now. After all, it only takes a majority vote to raise taxes and it only takes a majority vote for increased government spending (the source of those "evil" deficits). But no. Under a contrived Senate budget rule, 60 votes in the Senate were necessary to pass this bill.

How does all that affect you? If you have a will that was designed to maximize avoidance of the Federal Death Tax with highly technical provisions, then those provisions may cause unforeseen results as scheduled changes in the tax law take effect between now and 2011.

As of this writing (early 2006), the amount each person can pass to the next generation free of the death tax stands at \$2 million. In 2009 that amount will increase to \$3.5 million. In 2010 the Death Tax is scheduled to be repealed - for one year. In 2011 the Death Tax reverts to the 2002 version of the law and the death tax will kick in at \$1 million. Will elderly multi-millionaires kill themselves on December 31, 2010?

Just reciting the current state of the tax laws is to satirize them. However it should also suggest that wills that were drafted prior to the major changes in the 2001 Tax Act could be referring to a version of the Internal Revenue Code that is “history.” Even worse, a tax-oriented bequest in the will could require “over-funding” of the testamentary trust. That could also be a source of some major disappointment, and serious heartburn, to the surviving spouse who was expecting more flexibility than having most of the family assets tied up in a trust.

What are your alternatives? Do you write a new will every September, after you see what Congress has done to us lately? I do not think such drastic measures are necessary. However, I tell clients that they should not count on getting more than ten years of use out of their wills before they need revising.

Of course, if you don’t have a will then revision is not an issue. Just do it.

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Patrick J. Gibbs practices law in Roswell, Georgia with a concentration on Wills, Trusts and Estates. This article is intended to be educational. Legal advice should be obtained as to individual needs before taking any action.