

2023 · WHAT ISSUES SHOULD I CONSIDER WHEN REVIEWING MY ESTATE PLANNING DOCUMENTS?



THRESHOLD ISSUES	YES	NO
Have you recently changed residency? If so, ensure that you have established your domicile (i.e., legal home), and that your estate plan is valid under the laws of your domicile.	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review the applicable laws and any changes that have occurred since you executed your documents (state or federal)? If so, review how your plan may have been affected, and update it accordingly.	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to confirm and share the location of your original documents? If so, ensure that your documents are kept in a safe but accessible place, known to your family and/or fiduciaries.	<input type="checkbox"/>	<input type="checkbox"/>

GENERAL POWER OF ATTORNEY	YES	NO
Do you need to confirm the terms of your General POA? If so, review whether the powers are effective immediately or are “springing” (contingent upon the occurrence of a factor, such as incapacity), and whether they are durable (continue beyond your incapacity).	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review your appointed agents? If so, consider the following: <ul style="list-style-type: none"> ■ If you name multiple agents, review whether they may act individually or must act jointly. Understand the complexities that can arise when agents must act together, and consider naming individual agents under concurrent General POAs if convenience is a priority. ■ Confirm that your successor agents are good back-ups for your primary agents. 	<input type="checkbox"/>	<input type="checkbox"/>
Do you want to limit your agents’ powers?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a need or good reason to record your General POA?	<input type="checkbox"/>	<input type="checkbox"/>
Have you revoked any prior General POAs? If so, consider appropriate steps to prevent unauthorized action by your prior agents. In some cases, recording may be advisable or necessary.	<input type="checkbox"/>	<input type="checkbox"/>

HEALTH CARE POWER OF ATTORNEY AND LIVING WILL	YES	NO
Do you need to review your appointed agents? If so, consider the following: <ul style="list-style-type: none"> ■ Given the nature of this role, local or readily available agents may best serve your needs. ■ If you name multiple agents, review whether they may act individually or must act jointly. Understand the potential inefficiencies and any disputes that could arise among co-agents with respect to your health care. ■ Confirm that your successor agents are good back-ups for your primary agents. 	<input type="checkbox"/>	<input type="checkbox"/>
Are you planning to undergo a health procedure? If so, consider executing the relevant medical institution’s Health Care POA form, in addition to what you might have in place.	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review your Health Care POA to confirm HIPAA authorizations?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to confirm that you clearly expressed your wishes regarding your end-of-life treatment options? If so, review your Living Will Declaration and your instructions regarding the provision of artificial nutrition, hydration, palliative care, and life-prolonging medical procedures in the event of a terminal condition, vegetative state, etc.	<input type="checkbox"/>	<input type="checkbox"/>

LAST WILL AND TESTAMENT	YES	NO
Do you need to review your Executor/Personal Representative appointments and successors? If so, consider the following: <ul style="list-style-type: none"> ■ Confirm that your appointed fiduciary is qualified to serve under your state laws, and consider whether they are capable of fulfilling their duties. ■ If you are naming co-fiduciaries, weigh the benefits against the possible complications. 	<input type="checkbox"/>	<input type="checkbox"/>
Do you have minor children? If so, consider the following: <ul style="list-style-type: none"> ■ Confirm that your plan includes trust provisions (e.g., in a testamentary trust or in a living trust) to control the timing and amount of access to funds, and to properly support and protect your children. (continue on next page) 	<input type="checkbox"/>	<input type="checkbox"/>

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LAST WILL AND TESTAMENT (CONTINUED)	YES	NO
<ul style="list-style-type: none"> Name one or more guardians, including successors, to care for your minor children in the event of the death of both parents. Consider whether the same individual(s) should serve as Trustee(s), or whether a division of responsibility would be more beneficial. When naming a married couple as guardians, consider whether divorce or the death of one party would affect their suitability. 		
If you hold any testamentary powers of appointment, have you properly exercised them under your Will?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review the allocation of the estate and/or inheritance tax burden?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a plan for your digital assets and information?	<input type="checkbox"/>	<input type="checkbox"/>
Does your Will refer to a tangible personal property memo? If so, ensure that you have completed the memo according to your wishes.	<input type="checkbox"/>	<input type="checkbox"/>

REVOCABLE LIVING TRUST	YES	NO
Do you need to review your Trustee/Co-Trustee appointments and successors? If so, consider the following: <ul style="list-style-type: none"> Ensure that your appointed fiduciary is qualified to serve under your state laws, and consider whether they are capable of fulfilling their duties. Weigh the costs and benefits of appointing a corporate fiduciary. 	<input type="checkbox"/>	<input type="checkbox"/>
Do you have beneficiaries with special needs?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review the allocation of the estate and/or inheritance tax burden for assets passing under your trust?	<input type="checkbox"/>	<input type="checkbox"/>
Does your Will pour over into your trust?	<input type="checkbox"/>	<input type="checkbox"/>
Did you, or do you need to, fund your trust during your lifetime? If so, consider what assets to convey to your trust, and when. Trust-owned assets will avoid probate at your death.	<input type="checkbox"/>	<input type="checkbox"/>

IRREVOCABLE TRUSTS	YES	NO
Do you have an ILIT? If so, confirm that the Trustee is properly administering the trust, all premiums are properly paid, and any Crummey Notices are timely issued (if applicable).	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a split-interest trust, such as a CRT or CLT? If so, confirm that the Trustee is properly administering the trust, and annual payments are properly calculated and made.	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a SLAT or a GRAT? If so, confirm that the Trustee is properly administering the trust, and that actions do not risk inclusion in your taxable estate.	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a QPRT? If so, monitor the term of the trust, and plan for the transfer of ownership and the possible need to rent back the residence, observing proper formalities.	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to confirm that income tax returns are properly filed for your irrevocable trust(s)?	<input type="checkbox"/>	<input type="checkbox"/>
Are your actions consistent with the terms of your trust?	<input type="checkbox"/>	<input type="checkbox"/>

MISCELLANEOUS	YES	NO
If you have a premarital agreement, do you need to ensure that your estate plan is in alignment?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to review your nonprobate transfers, to ensure that they align with the planning under your Will and trust? If so, consider the following: <ul style="list-style-type: none"> Assets that are jointly owned or TOD/POD pass by survivorship. Review deeds and account titling to ensure alignment with your overall plan. Retirement accounts, life insurance policies, annuities, etc. pass by beneficiary designation. Confirm the status of your beneficiary designations with each institution. 	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to add flexibility to your plan (e.g., by designating a trust protector), to allow changes should unforeseen circumstances arise in the future?	<input type="checkbox"/>	<input type="checkbox"/>
Are you concerned about a future Will or trust contest?	<input type="checkbox"/>	<input type="checkbox"/>

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Elizabeth L. Whitteberry specializes in Retirement Income Planning, Tax Minimization Strategies, Wealth Management, Investment Management, Risk Management, Estate Planning, and Gifting Strategies.

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