



Trusts and Estates Newsletter

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A RESOLUTION WORTH KEEPING

by Jonathan C. Kinney, Esquire

As we come to a close on another year and the season of resolutions is upon us, a few reminders are worth mentioning with regard to existing estate planning documents. If you already have prepared documents, it is very important to keep a will and other documents, such as a trust and powers of attorney up to date. Not only does this ensure that these documents accurately reflect your wishes, but also evidences your attention to these matters and protects against possible challenges once you have passed away.

As an estate planner, one of the frequent questions raised by clients is how often a will should be updated. While the answer will depend largely on each individual's circumstances, as a rule of thumb major life events will typically necessitate a review and revision of a will. These would include: marriage or divorce, the birth of children or grandchildren, and the death of existing named beneficiaries, to name a few. In addition, the acquisition or sale of property may, but need not, require a change.

Another scenario in which a review of your existing will is strongly recommended is a move to a different state. It is important to note, that a will, if properly executed in Virginia, is valid in Maryland or any other state you may move to. While the document itself is still valid, it is worth checking with an attorney licensed to practice in the state to which you have moved to verify that the disposition of your estate will occur in the same way as you intended.

Changing the terms of your will is a simple process and can be achieved in one of two ways: by either creating a new will or executing a codicil to your existing will. A codicil is simply an amendment to your will. It allows for changes to certain sections of your will and signifies more of a piecemeal approach to an estate plan review. Codicils must be carefully prepared and drafted in order to state the change clearly so that it is understood when read together with the will. The execution of a codicil requires the same formality as a will, such as a signature and two witnesses before a Notary Public. Since the execution of a codicil does not necessarily bring about

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either cost or time savings, and in addition it has the potential to cause confusion if not carefully worded, the creation of a new will is often a more optimal solution to achieving peace of mind when making changes to your will.

Going back to the original question of how often a will should be updated, an annual resolution to review a will and other documents comprising an estate plan every three to five years is definitely worth keeping! This will ensure the documents constantly reflect your current family situation and your current goals. If you need to change your will or other estate planning documents, contact your estate planning attorney, who can ensure your requested changes are correctly made in keeping with both your own objectives and current state law.

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NEW UNIFORM POWER OF ATTORNEY ACT IN VIRGINIA

by Ronald A. Feuerstein, Esquire

Earlier this year, the Virginia legislature adopted the Uniform Power of Attorney Act. The legislation has a reenactment clause providing that the new Act will not be effective unless reenacted in the 2010 Session General Assembly.

The Act is a most welcomed addition to the tool kit for Virginia estate planners in drafting comprehensive and flexible legal instruments and documents.

Among other things, the new Act addresses issues relating to good faith reliance, limitations on an Agent's power, the frequently encountered refusal by various institutions to recognize a power of

attorney, judicial review, resignation, abuses by Agents and numerous other topics. There is also an optional statutory form included. Practitioners will find the statutory form to be an excellent starting point in drafting or in modifying existing documents.

While the Act will doubtlessly have a profound effect on the use and acceptance of Powers of Attorneys in Virginia, just a few of the more notable new rules are as follows:

1) ***Durability presumed.*** The Act deals with the issue of "durability." Under the Act, a Power of Attorney is durable unless otherwise specifically provided.

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2) ***Delivery of the instrument.*** The Act repeals former Code of Virginia Section 11-9.7, which provided that an Agent was deemed to possess powers and authority granted in an instrument notwithstanding a failure of the Principal to deliver the instrument to the Agent.

3) ***Powers requiring specific grants.*** Under the Act, express authorization by the Principal is required if the Agent is authorized to exercise certain powers (so-called "hot powers"), as follows:

- i. Create, amend, revoke or terminate an inter vivos trust;
- ii. Make gifts;
- iii. Create or change rights of survivorship;
- iv. Create or change a beneficiary designation;
- v. Delegate authority granted under the Power of Attorney;
- vi. Waive the Principal's rights to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- vii. Exercise fiduciary powers that the Principal has authority to delegate.

4) ***Third Parties' Acceptance.*** Under the Act, a third party must either accept and acknowledge the Power of Attorney or request a certification, translation or opinion of counsel within 7 business days of presentment of the Power. The third party

will have to accept the Power of Attorney within 5 business days after receipt of the requested documentation. As a result, third party entities should no longer have many, if any, reasonable justifications to insist upon use of their own Power of Attorney form, a problem frequently encountered by practitioners, Agents and their Principals.

The new Act, assuming it is reenacted in the 2010 legislative session, will prove very helpful to estate planning practitioners in Virginia and their clients. The terms of its built-in protections for Principals, and providing far more certainty concerning a long list of issues will greatly clarify the duties and obligations of Agents.

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RESOLVE TO MAKE A DIFFERENCE IN YOUR LIFE . . . AND POSSIBLY SOMEONE ELSE'S!

by Thomas Repczynski, Esquire

2010 is almost upon us! So here it is . . . my list of suggested “resolutions” each of us might consider seriously in order to make getting out of bed that much easier in the morning:

- **Strategic planning.** Set short-, mid- and long-term goals for yourself and write them down. Consider the humor in the one-liner: “I’m not sure where I’m headed, but I’m making great time!” How can you measure your progress if you don’t have an end-goal in mind? Consider, as well, trying to define for yourself (and writing it down so you can remind yourself and revise as appropriate) your purpose in life. If your goals include starting a new business, non-profit, or other venture, seek good

legal counsel early in the process. An ounce of prevention . . .

- **Financial planning.** Create a personal balance sheet. Then prepare a personal cashflow analysis. There are plenty of forms available on the Web these days. You can’t know what you need until you know what you already have (or don’t have!) and where it all goes.
- **Estate planning.** Nothing is certain except taxes and death. You don’t have to be rich or old to need a plan. The recent tragic loss of a local husband and wife who left behind several young girls was a wake-up call to remind me that we cannot expect the unexpected but we can plan for it. Regardless of the extent of our wealth, the least we can do for our loved ones is avoid their having to deal with our lack of planning. A simple will can help avoid probate costs, unwanted litigation, and generally prevent the government and the lawyers from taking the lion’s share of whatever “kingdom of riches” you may have amassed.
- **Practice “sustainability.”** A single buzzword to replace the “3 R’s” (reduce, reuse and recycle) – adopt even a single practice just once a week and refuse to believe that you cannot make a difference. (I was told just today that the energy needed for a single plastic bottle – production, shipping, etc. – would light a 60-watt bulb for 6 hours. And if enough of us used one less plastic bottle a week, we could save enough oil to fuel a million cars for a year.) Take a few minutes to explore the benefits of tap water. You might just surprise yourself.
- **Weigh yourself.** Do it every morning when you awake . . . and write down the number accurately. If this doesn’t make you think twice about what you put in your body, little else likely will . . . diet or no diet.
- **Purposeful pauses.** Can’t hit the treadmill every day? A chiropractor colleague of mine recently taught me to break up my day with short

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meaningful breaks of at least a couple of minutes. Take a walk around the office; do a few pushups or jumping jacks; just do something.....smelling roses is optional!

And the #1 way to make getting out of bed easier in the morning...

- **Get a better bed!** Seriously. If you resolve to change nothing else about your life, consider spending some real money on a new mattress set. Nothing affects the way you spend your days as much as how you spend your nights!

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This newsletter was prepared by Bean, Kinney & Korman, P.C. as a service to clients and friends of the firm. The purpose of this newsletter is to provide a general review of current issues. It is not intended as a source of specific legal advice. © Bean, Kinney & Korman, P.C. 2009.



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