

Be Careful When Revoking Estate Plan

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Life does not stand still. Children grow up. Marriages dissolve. Friends grow apart. Financial circumstances change. People we once counted on move or pass away. Most of these life changes cause a need for a change in your estate planning documents. Some of these changes could even cause your estate plan to become obsolete or counterproductive to your current needs.

It's important to know how the many documents that make up an estate plan can be revoked to reflect a change in circumstances.

Will: A Testator can revoke a Will by either a subsequent testamentary instrument, or by a physical act. Texas Estates Code 253.002. The most effective way to revoke a Will is with the creation of a properly executed new Will specifically revoking the prior Will. Simply marking out the out of date provisions on the old Will does not work. A Will can also be destroyed by the physical act of the Testator tearing it up or burning it.

Medical Power of Attorney: The Advance Directive Statute in Texas' Health and Safety Code states that a medical power of attorney is revoked by executing a new medical power of attorney.

Living Will: The Advance Directive Statute in the Health and Safety Code also directs how to revoke a living will and gives three options to do so: 1. Physical destruction, 2. Written revocation given to attending physician and the physician writes "VOID" on each page, or 3. Orally tell physician that you revoke it and physician writes "VOID" on each page. The easiest and most effective way to handle revocation is by executing a new living will.

There is also a provision under the Advance Directive statute in the Health and Safety Code that states: later in time controls if two advance directives are presented.

Authorization to Release Medical Information (also known as the HIPAA document): It is best practice to provide a written revocation to the medical provider to revoke this document.

Declaration of Guardian Before Need Arises: Texas Estates Code 1104.210 states that the execution of a subsequent declaration of guardian revokes the prior document.

Statutory Durable Power of Attorney: Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation (in statutory form). The inclusion of a statement in a new power of attorney that all prior powers of attorney are revoked is wise. It is also wise to include a provision that the power of attorney may be revoked only by filing a written notice of revocation in the real property records of a certain county.

It's a good idea to review your Will, inventory your assets and potential beneficiaries as well as the decision makers in place to make sure your estate planning documents are relevant in the event of life's changes. The best practice is not to merely revoke the documents that no longer fit with the circumstances in your life but to replace the old documents with new.

Take time to ask yourself if any of these changes have occurred in your life since you executed your estate planning documents: Have you married or divorced? Has your spouse passed away? Have any of your beneficiaries died or has your relationship with them changed? Has the physical or mental condition of any of your decision makers or beneficiaries changed? Have you moved to another state? Has the size of your estate changed substantially? It would be wise to pick a day, such as your birthday or a day early in the New Year, to help remind yourself to do this annually.

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