

# 12 Different Times When You Should Update Your Will

By Daniel A. Timins, Esq., CFP®, Owner | May 26, 2020



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I can't tell you how often I meet with clients who tell me they have been meaning to update the wills for years but never got around to doing it. Their numbers are only surpassed by the people who didn't think they needed to update their legal documents, and their omissions become clear once they passed away and their family discovers the will is woefully inappropriate.

Some wills really do pass the test of time. I have seen a 50+-year-old will that was spot-on. The deceased individual stated they wanted their spouse to receive their assets, then their children equally if their spouse passed away, and named the same people as executors of their estate. The drafting attorney could have patted himself on the back that he foresaw exactly how things would be, but the skeptic could say he got lucky that what he drafted happened to play out in this family life without any hitches.

**It is also important to realize that it isn't merely "why" you are updating your will, but "when" you are updating that can make all the difference. Acting too late (or too early) may mean your changes are no longer appropriate or even immediately invalidated. Here are 12 times you should consider changing your will:**

SEE ALSO: 10 Common Estate Planning Mistakes (and How to Avoid Them)

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**1. You are having your first child.**



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This one should be a no-brainer, and the birth of a first child is usually when people create their will. The focus on this will should be naming your choice of guardian for your child, and who will serve as trustee for any trust created for that child by the will. The will should be flexible enough to accommodate the possible birth of future children.

Execute this will before the child is born: While you can still execute a will after your child is born, you likely have a hundred other things to do, and doing them with two hours less sleep. Get this done before you give birth.

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## 2. You are thinking about divorce.



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This one, too, should be obvious — but the timing might be surprising: Do it ASAP ... before you for divorce. Remember that your spouse has marital rights to a portion of your estate if you die without completing the divorce proceeding. And once you file for divorce you often can't change your will until the divorce is finalized.

Executing the will before you commence the divorce ensures that your spouse will not receive a share of your money if you die before the divorce is complete.

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### 3. You have gotten divorced.



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Now that you are divorced, your former spouse no longer has any rights to your estate (unless do as one of the terms of the divorce). And even if you don't change your will, most states have that invalidate any distributive provisions to your ex-spouse in that old will. So ... who gets the money now? Make sure to update your will as soon as permissible so your new beneficiaries are clearly identified. In addition, you may be changing your name to its pre-marital persona.

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## **4. Your child gets married.**



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An older parent is a wiser parent, and you may know more about your future ex-son-in-law and future ex-daughter-in-law than your child knows. But your current will likely addresses issues that applied when your child was an infant, meaning it does not address your child's possible divorce. You may be able to mitigate the lack of a prenuptial agreement by creating trusts in your will and including post-nuptial requirements before your child can receive any estate distributions.

Create this will immediately after your child gets married, since (a) the marriage may never happen and (b) if you do happen to die before the marriage, anything you leave your child is not considered marital assets in most states.

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## 5. Your beneficiary develops creditor or substance abuse problems.



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Some wills leave money directly to a beneficiary. If that beneficiary is addicted to opioids or prescription drugs, or if the beneficiary has large creditor problems you should update your will include trusts that allow a third party to only distribute funds under the correct circumstances.



Create this will as soon as you suspect there is a problem, since a trustee will be able to assess problems with more certainty at a later date.

**SEE ALSO: Designing Trusts for Beneficiaries with Substance Abuse Problems**

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## **6. Your named executors or beneficiaries die.**



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If your estate plan named individual people to manage your estate or receive any remaining funds and those people are no longer alive you may have to update your will. Your old will may name contingency plans or leave undistributed funds to the deceased person's children, but you may want to re-evaluate this decision.

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## **7. Your young family member becomes a responsible adult.**

*Getty Images*

Your old will likely named your spouse or parent as your first executor, then perhaps your sibling or a friend. Now everyone is three or more decades older (or deceased), and your younger family member may be up to the task of handling your estate affairs more expediently than your past choices.

Don't rush to this decision: While some older individuals don't have too many good choices over younger trusted friends or family members, making a rushed choice may affect several people.

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## 8. New legislation is passed.



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Every few years Congress passes legislation that can royally derail your estate plan. Estate tax laws have been changing every few years, and recent laws — including the “Tax Cuts and Jobs Act” and the “SECURE Act” — have updated how Inherited IRAs, same-sex marriage and family business succession planning work.

Make sure to ask your attorney every few years if there have been any new laws that are relevant to your estate planning.

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## 9. You come into a windfall of money.



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If you finally get that huge payday from the scratch-off ticket you bought, or inherit money, consider updating your will so you can ensure proper tax planning. For example, you may want to start gifting money to younger family members' 529 college savings plans, or create a donor advised fund that both shield some money from taxes and leave a nice legacy to a cause you believe in. Also, you want to reconsider when and how much money you are leaving to certain people or charities.

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## **10. You can't find your original will.**





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Wills are the product of hundreds of years of Anglo-American jurisprudence. Think parchment, barristers wearing powder and wigs. A formal, original will matters, and photocopies are very difficult to validate. If you can't find your will, or if you agreed to have your attorney hold onto your original will and now don't want to deal with him or her, make sure you replace that will with a new original one that explicitly states it invalidated all prior wills. Do this as soon as possible.

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**11. You buy property in another country or move to another country.***Getty Images*

Plenty of countries have treaties with the United States allowing for reciprocity of wills: Your will drafted in French when you were stationed in France is likely valid in the United States. But transferring property in one country may be delayed if the will must be probated in the other country first. Consider having a different will for each country you own property in.

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## 12. Your family and friends become enemies.



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Few things can derail your planning more than parties who don't get along. The problems with animosity between parties in your will are compounded when one party is your family and the other is your friend. Only your nearest family members can easily fight your will, since your "next-of-kin" are typically your closest family members.



are required parties to your probate (even if you fully disinherit them), while your friends have default rights.

If you think your family will try to take a legal right hook to your best friend's bequest in your will, consider adding a No Contest Clause that will serve to disinherit the aggressive family member tries to attack your friend.

**SEE ALSO: Beneficiary Designations – The Overlooked Minefield of Estate Planning**

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