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How often should you update your will?

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While there is no fixed time period, it is important to revisit the contents of your will whenever your personal or financial circumstances change.



Developments in the law, which may affect the overall scheme and structure of your will, may also require that you consider changing your will.

Any number of contingent changes might occur during your lifetime. We highlight here some of the more common events.

Personal circumstances

Marriage: getting married, or remarrying. Do bear in mind that your marital status does not automatically result in your spouse becoming a beneficiary of your estate. A remarriage generally requires a thorough reworking of your will in order to balance potential competing expectations and needs.

Divorce: In law, for a period of three months after the death of the testator of a will, any former spouse will be considered to have predeceased the testator and so, will not benefit, despite being nominated as a beneficiary. If that is not what you intended, you need to update your will after a divorce and specify what your wishes are for your ex-spouse after the three-month window period expires. Often legal obligations arise as a result of a divorce order and this should be borne in mind when drafting your will.

Children: The birth of a child or additional children will call for changes to your will, particularly to cater for their situation on the death of the last dying parent. You will most

certainly want to ensure that your children are taken care of after you die. Depending on their ages, you might consider providing for guardianship and you might decide to create a trust for any minor children (those under the age of 18). Without this, the appointed guardian will face inconvenience in accessing any funds needed to take care of the children, or ensuring viable growth for those funds.

Beneficiaries: If a nominated beneficiary dies without provision being made for a direct substitute beneficiary, the nomination should be revisited. Similarly, a previous relationship may have ended, or new relationships formed, which you may want to consider. Failure to do so may result in your intentions being frustrated.

Employment: Changes in your employment or career might affect your finances and, therefore, your estate. For instance, a new business venture might require life cover to fund a partnership buyout or to settle liabilities in general. If you have retired recently, this life cover might now be superfluous. On retirement, you may wish to integrate the proceeds of your pension fund into your estate plan.

Financial circumstances

Any major or general change in your financial circumstances should trigger a reminder to review your will.

Assets: Perhaps you have inherited a substantial estate, requiring you to re-look at your will, especially from a potential estate duty perspective. Alternatively, you may have fallen on hard times through unforeseen or added financial obligations and debt, which may require you to reassess the liquidity of your estate. Or you may have realised a significant asset from the sale of a property that is mentioned in your current will, but without a replacement provision. Events of this nature will require you to revisit the document.

Insolvency: What happens if a beneficiary's financial circumstances change? If, for example, a beneficiary is exposed to potential creditors' claims, or has been declared insolvent, this will require you to build in certain safeguards for that beneficiary's benefit.

Changes in law

Changes in terms of the Law of Succession in general, and specifically in tax law, should cause you to re-examine your will. Recently, for instance, the estate duty threshold was increased substantially with the introduction of the so-called "portable estate duty". This is a good reason to revisit your will if it contains the commonly applied section 4A abatement trust.

If the changes required are insubstantial, making amendments, deletions or additions by way of a codicil rather than drafting an entirely new will may be all that is necessary.

In our experience, if a long time has elapsed or major changes have occurred in the interim, an out-of-date will can prove to be more misdirected and cause more hardship to the deceased's family than if the person had died without a will, because there are no forced inheritance provisions in our law.

Note:

The word 'marriage' is used in the wider context to include alternative forms of relationships recognised in our society.

*Jacobs is Director and National Head of the Trusts and Estates Practice at Cliffe Dekker Hofmeyr. This article is meant to inform and educate, not to advise.

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