

# When Should I Review My Will?

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My name is Kendall Brown. As an attorney, I have practiced in the estate planning area for over 40 years. When I meet with my clients to discuss their estate planning, one item we discuss is when they should review their Wills. The purpose of this tutorial is to discuss that matter with you.

## When Should I Review My Will?

- General rule
  - Every 5 years
- When family situation changes
- When moving to new state
- When financial situation changes
- Other matters to review

The general rule I give my clients is that they should review their Will at least every five years. The Will should also be reviewed when the family situation changes, when there is a move to a new state, and when the financial situation changes substantially. In addition to reviewing their Will, there are other matters that should be reviewed at the same time.

## When Family Situation Changes

- Marital status
  - Marriage
  - Divorce
  - Death
- Children
  - First child
  - Additional children
  - Documents can accommodate additional children

As I indicated above, you should review your Will when your family situation changes. Obviously this means when your marital status changes. For example, if you get married, get divorced or your spouse dies, you should review your Will and make appropriate changes. Also, if you are not married and your relationship with your partner or significant other changes, you should review your Will. Likewise, if you have additional children in your family you should review your Will. It is almost always necessary to modify your Will upon your having a first child. Often your documents will accommodate additional children but at least review your Will when you have additional children.

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## When Moving To New State

- Each state has different requirements for documents:
  - Will -- format, titles
  - Living Will -- form
  - Health Care Power -- form, titles
  - Financial Power - format, titles
- New state may recognize old documents

If you should move to another state it is important for you to review all of your estate planning documents. Each state has slightly different requirements for its estate planning documents. As an example, the way your Will is formatted as far as signature lines, etc., is different in each state. Also, the titles of various persons, such as executors and trustees, changes from state to state. Usually, the general structure of a Will does not change, so the modifications are fairly easy to make. With your Living Will each state again uses a slightly different form. It is best to have your Living Will in the proper form. Each state has a different form for your health care power as well. Again, the titles of the power holders change from state to state. Your financial power of attorney has different signature requirements based on different states and, again, the title of the agent named under that financial power may change from state to state. If you move to another state the new state may recognize your old documents or it may not, so it is important for you to review those documents after you have moved.

## When Financial Situation Changes

- Considerations include:
  - How assets are divided
  - When assets distributed
  - Death taxes - if estate is valued over \$5,000,000

If your financial situation changes substantially you should also review your Will. Quite frequently with an increase or decrease in your financial situation you will look at the provisions of your Will and determine that the assets are to be divided differently among your beneficiaries given the change in your financial situation. It is also appropriate to consider when your assets are to be distributed if your financial situation changes. If you have an estate of \$250,000 it may be quite appropriate to have assets pass directly to your children immediately. However, if your estate is \$1,500,000 you may want to have those assets pass out in multiple distributions at various ages. Death taxes come into play if your estate is valued over \$11,000,000. There are many techniques that can be used to effectively eliminate or minimize death taxes on estates over \$11,000,000.

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## Other Matters To Review

- How assets are titled
  - Jointly held assets – home, etc.
- Beneficiary designations
  - Life insurance policies
  - Retirement plans
- Who are your Executors, Trustees, Guardians and Agents

In addition to reviewing your Will, Living Will, health care powers and financial powers of attorney, you should also review a number of other matters. First you need to determine how your assets are titled. This particularly relates to jointly held assets such as your home. Realize that jointly held assets, if they are held as joint tenants with right of survivorship, will pass to the joint tenant regardless of what your Will states. In addition to how assets are titled, you should also review beneficiary designations for your life insurance policies and retirement plans. Again, the beneficiary designation controls where these assets pass, even if it is in conflict with the provisions of your Will. Finally, you should also review whom you have chosen as executors under your Will, as trustees of any trusts created by your Will, as guardians for your minor children and as health care and financial agents. These people or entities may change depending on your family situation, your financial situation or state of residence.

## When Should I Review My Will?



In this tutorial we have discussed when you should review your Will and other estate planning documents. As a general rule, you should review these documents no less than every 5 years. You should also review them if your family situation changes, if you move to a new state or if your financial situation changes substantially. While you are reviewing your Will you should also review how title to your assets is held, the beneficiary designations on your life insurance policies and retirement plan accounts, and who you have chosen as your executors, trustees, guardians and agents.