

All in the Planning

Spring 2021

Quarterly
newsletter
prepared and
distributed by:

Jarrett &
Luitjens
ESTATE & ELDER LAW

Change of Mind, Change of Estate Plan

Ancient Greek philosopher Heraclitus maintained that change is the only constant in nature. Modern times continue to demonstrate that change is inevitable, and human behavior models that same understanding. In the area of estate planning, attorneys strive to draft plans that are flexible, withstand passage of time, and anticipate certain life changes. Planning for a client's change of mind is a bit trickier, but that is why most plans are revocable, amendable, or replaceable.

It's a bit ironic when someone signs a "Last Will," as it only means it is the last one they signed up to that point in time. It does not prevent someone from signing another "Last Will" to replace the prior one. So how do you make changes to a Will when you have changed your mind? NEVER write on your original will to make changes, as they will not be valid and may serve to invalidate the whole document. If you are making minor changes, you may want to sign a "Codicil" which is an amendment to a Will. It serves to supplement the original Will, referencing which provisions are changed and/or adding additional language. If you are making extensive changes or prefer to keep private the contents of the original Will, then you may want to completely replace it with a new Will.

For example, if you are updating Executors because your children are now grown adults and you no longer need your siblings to serve in that capacity, then a Codicil may work just fine. No one should be offended by nor question the revision. But if you are changing distribution clauses or removing a guardian for your children (and don't want anyone to know your original plan), then you may want to update the Will in its entirety.

Similarly, if your estate plan involves a Revocable Trust, you can either amend it in part or restate in whole. As with the previous Will example, the decision to amend or restate may depend upon the sensitivity or complexity of the change.



Another factor may be the practice of the estate planning attorney, as some may not be willing to amend the documents (will or trust) of another attorney. Often, it is easier and time-efficient for a practitioner to start fresh with his or her own known language rather than thoroughly read through and compare a colleague's document. This could also prove to be more cost effective for the client.

Powers of Attorney (financial) and Health Care Directives are more likely to be replaced than amended when clients change their mind about named agents. POAs often have a shorter "shelf-life" due to difficulty with 3rd parties honoring the document, particularly due to age. An amended POA could add to that challenge, so a freshly-dated POA is preferable to an amendment. Health Care Directives can be amended for minor changes or additions, but it may be more practical (and appreciated by health care professionals reading the document) to have all instructions contained in one complete version.

Changing your mind about estate planning decisions is ok. Change is expected. Making the updates in the correct way will ensure those changes are effective.

Lawyer Joke

Diogenes went to look for an honest lawyer. "How's it going?," someone asked. "Not too bad," said Diogenes. "I still have my lantern."

Golfing4Life



After having to cancel our 2020 tournament, we are happy to announce that the 5th Golfing4Life Tournament will be held July 21st at the Links at Lang Farm. Jarrett & Luitjens is a proud co-host to this tournament that raises about \$10,000 for the Cancer Patient Support Foundation's Emergency Fund. The Emergency Fund supports the needs of Vermont cancer patients and their families. To join the fun and support this worthy cause, contact Holly Keough at holly@vtelaw.com for more information.

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