

TWO THINGS CERTAIN®

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When to Update Your Trust

By Kelsey Ott

Our lives change constantly. Marriages, divorces, children, and career paths are just a few of the factors that change our circumstances over the course of a lifetime. Your estate plan only captures your intentions at the time you created it. You will need to periodically update your trust for it to accurately reflect your evolving goals. Consequently, it is very important to regularly reevaluate your estate plan.

You may want to change beneficiaries or augment the distribution amount a particular beneficiary receives as a result of a wedding, divorce, or because a beneficiary's financial situation has changed. While some joint trusts contain provisions that terminate the trust upon divorce, other trusts will continue despite the change in marital status, leading to unintended consequences.

The successor trustee you name today may not be your ideal trustee in the future. Perhaps your first choice is capable, but moved across the country and can no longer effectively administer your estate. Maybe your estate gained significant value from when you first created the trust, making it too complex for an individual trustee to handle. Alternatively, the relationship between your beneficiaries may now benefit from a neutral party as a successor trustee. When circumstances like these occur, it may be best to change your successor trustee in order to ensure a smooth administration.

Updating your trust also allows you to adopt more favorable laws or powers into the trust instrument. This is particularly relevant for older trusts that may predate the creation of new laws or powers. Some examples of these laws include adding a special needs trust provision in case one of your beneficiaries goes on SSI, or adding a trust protector to protect your trust in the event of your incapacity. Adding new powers to your trust may also be useful if you gain special assets or interests like a business. Perhaps you want to leave instructions for what the trustee can and cannot do with your controlling shares.

There are two ways to update a trust: by amendment, and by restatement. Amendments are for smaller changes, such as changing a beneficiary's distribution from \$10,000 to \$20,000. Amendments are generally just a few sheets of paper that will refer to the sections in the trust it modifies. Restatements, on the other hand, create a completely

new copy of your trust with your new revisions. Restatements are cleaner and are used for larger changes, or to consolidate several prior amendments.

JGB's TrustGuard™ makes updating trusts, wills, and ancillary documents easier, less stressful, and more economical by providing you an annual consultation with your JGB estate planning attorney. At the consultation, your attorney will help you determine when and how to update your documents. In addition to this meeting, all amendments, restatements, and other updates are included in the annual TrustGuard™ fee to ensure that your estate plan is in order no matter how many unexpected events come your way.



Johnson, Gasink & Baxter, LLP

1138 Professional Drive
Williamsburg, VA 23185
(757) 220-9800
(804) 824-9690

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About the Author:

Kelsey Ott is a member of the College of William & Mary Law School Class of 2015.

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