

Move to a New State? Time to Update Your Estate Plan

By Michael J. Foster, CTFA, Senior Vice President, Private Client Advisor

Perhaps you're one of the millions of individuals who moved to another state in the past year. If so, the task of updating your estate plan likely fell off – or never made it on – the “to do” list of never-ending details needing attention once the moving van finally pulled out of the driveway of your new home. However, it's not too late to make sure your estate plan documents comply with the laws in your new state of residence. It's one of the most important things you can do to protect your loved ones and their future.

Why is this important?

During these uncertain times, protecting loved ones—both now and in the future—has become a top priority. Among other things, you may be considering your legacy and what steps need to be taken to update your estate plan.

Family dynamics and circumstances change over the years. Failing to update important legal documents to reflect those changes can have unintended consequences and cause needless anxiety down the road. Planning for the inevitable not only gives everyone peace of mind, it also ensures your intentions are honored.

Updating or creating new estate planning documents – and officially signing those documents in your new location – provides evidence that it's your intent to make your new home your official state of domicile. While a will or trust executed in your former state of residence will not be invalid in a new state, problems may arise when the laws in the state you moved from conflict with the laws of your new home state. To avoid any legal problems, one of the first things you should do after you move to a new state is to have your estate plan reviewed by an experienced and qualified estate planning attorney who is licensed to practice in that state.

What documents should be reviewed and updated?

The following general guidelines may be a good starting point as you consider updating your estate planning documents to comply with your new state's laws.

Update Documents to Comply with Laws in Your New State

“There are many differences in state laws when it comes to estate planning documents. For example, powers of attorney (durable, financial, and healthcare) are set by state statutes, and those laws can vary greatly from state to state. Banks and hospitals will usually honor powers of attorney from the state where you previously resided, as long as they meet the legal requirements of that state. However, certain state statutes could have more stringent requirements for witnesses, signatures, or how some authority is granted to the named agent, which may in turn cause unnecessary delays in your new state of residence if your current documents don't meet these heightened legal requirements. Additionally, it may be more convenient to have an attorney-in-fact who also lives in your new state of residence.”



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Your will. As we mentioned earlier, most states accept a will from a previous state of residence as long as it was properly executed according to that state's laws. However, you still need to ensure your will achieves the end goals for your overall estate planning objectives. Perhaps the most important consideration is whether your executor or personal representative has the authority to serve in that capacity in your new state of residence or if you need to appoint a new in-state agent to act on your behalf.

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Essential health care documents. Because of the ongoing health care crisis, a living will, health care power of attorney, and durable power of attorney are more important than ever. These documents clearly outline your wishes regarding health care and medical decisions and appoint individuals to act on your behalf should you become incapacitated.

Check to see if you need to modify your documents for any COVID situations that may arise. Current planning documents may reference restrictions against certain emergency treatments, such as intubation or experimental therapies. Or you might be able to authorize a designated health care agent to communicate life-care decisions via video conferencing or email. Separate state laws may grant further rights and restrictions, so it's important to consult with an attorney licensed in your new state of residence regarding guidelines for your individual preferences and circumstances.

Other considerations

Probate. Distributing a decedent's estate under court supervision also varies greatly from one state to the next. Your estate planning attorney can help ensure your will and other estate planning documents comply with probate laws and processes in your new state.

In fact, a solid estate plan allows for a smooth transition of your assets – and may protect your loved ones from going through the costly and time-consuming process of probate altogether. It may include a last will and testament or trust, pour-over will, living will, health care power of attorney, and durable power of attorney. (If you do not have these documents in place, you should strongly consider doing so.) Additionally, by naming beneficiaries on your various accounts and insurance policies, your assets will in most cases transfer to the named individuals or trust without going through probate. Check all your accounts to make sure beneficiaries are updated and the right person(s) listed.

Marital property. Be careful of how marital property is treated in your new location, especially in community property states. For example, in common law states, spouses own property listed in each



individual's name and marital property is only considered jointly owned if titled in the name of both spouses. In community property states, all marital property is considered to be jointly owned, regardless of titling. Depending on your circumstances and the laws in your former and current locations, you may need to have an attorney draw up a new will to reflect your wishes.

Share your wishes with loved ones

When appropriate, take time to share your wishes with your loved ones and let them know where your important documents are stored. If possible, provide copies of important documents to those who may need them (e.g., successor trustee, executor of your will, health care power of attorney, durable power of attorney, life insurance policy beneficiaries, etc.). Moreover, it may be helpful to prepare a checklist of your accounts including where they are held and who should be contacted if something were to occur. By taking a proactive approach, those you care about most will be well prepared and provided for once you're not able to do so.

What are the next steps?

Moving to a new state is a perfect time for a fresh start. As with any life-changing event, you want to get off on the right foot. That's why it's important to make sure your estate planning documents are in order. This life transition also gives you an opportunity to review and update your personal information, address, and beneficiary designations on other important documents (e.g., life insurance policies, investment accounts, retirement and pension accounts, bank accounts, etc.). Commerce Financial Advisors are here to guide you through this emotional and exciting period in your life. Contact us today.

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