

Are There Estate Planning Documents You Should Get Rid Of?

It is important to understand how to keep your estate planning documents safe and to ensure that the right people have access to those documents. But it is also important to know when and how to dispose of documents that can cause problems.

So which documents are they and what should you do with them? Let's take a look.

Get Rid of Old Versions of Current Documents

If you created a new will or any other estate planning documents, you need to take steps to properly destroy the old one. Many people like to hang on to old versions of documents "just in case," but that can be a big mistake with estate planning documents.

Your new will, power of attorney, or other documents automatically revoke the old version so that the old document no longer has legal effect. If you keep it for reference, however, you could cause confusion and unintended conflict later on. Anyone who finds it might insist that it should be used. They might claim that your newer will is a forgery and that keeping your old will indicates that you wanted those terms followed. Or they might claim that you wanted to revoke the new will and revert to the old one.

If that's what you do indeed want to do, then destroy the new version instead. But you definitely do not want to keep two versions of the same document on file. Even if your family doesn't end up in conflict, confusion over the documents could still cause unnecessary delays and legal expenses.

Get Rid of Documents You Don't Want to be Enforced

You might have created documents and later changed your mind about the provisions, but you have not yet replaced them with new documents. If you don't want the terms in those documents followed, it is a good idea to destroy them, even if you haven't yet prepared new ones.

Sometimes, you can make handwritten changes to a document, but often those changes do not have legal force. It is best not to take chances.

For instance, if you and your spouse executed a prenuptial agreement to specify that a business one of you owned would remain that spouse's separate property, but you have since both worked to support the business for 20 years and you both agree that it would be unfair to consider the business to be the property of just one spouse, you might agree to revoke the agreement. If you don't want the provisions of the prenuptial agreement enforced, you should destroy it.

As another example, if you granted financial power of attorney to your son and then learned that he has an extreme fondness for gambling, you should consider revoking that power and destroying the document so that he will not have access to tempting funds.

How to Properly Get Rid of Legal Documents

Legal documents can often be revoked by writing something on the top to indicate that you no longer want the document enforced. But it is better to be safe than sorry.

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Rather than writing words that could be ignored or misinterpreted, it is best to destroy unwanted documents entirely. Even better, destroy the document in front of a disinterested witness such as your attorney.

You can cut it up, tear it up, or shred it. Dumping it in the trash or recycling bin would work, too, but there is always the chance someone could recover the document and try to enforce it. The court is not likely to accept the validity of a will that is held together with fifty pieces of tape.

The Nordhaus Firm Can Help You Keep Your Documents Current

Remember that as your life changes, your estate planning documents need to keep up. At the Nordhaus Firm, we can review your estate plan and see whether you need additions or updates to protect yourself and your family. Just give us a call at 214-726-1450 or contact us online.