Ten Steps Toward Review of My Estate Plan
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Action Steps Beginning

Name: ________________ **Today: _________**

Every three to five years or sooner, you should review your estate plan. Your circumstances may have changed requiring legal advice. For example, you should seek legal advice about revising your plan if you marry, divorce, change the state of your residence, have a child, increase the size of your family, win the lottery, or if someone named in your existing plan passes away or has a significant health issue. And there is always the chance that we have had a change in the law. It is so important to consider whether changes may be necessary:	• When was your plan last reviewed?
	1. <u>Review Your Current Plan</u>. The first step of an estate plan review requires that you understand your plan.
• Is yours a Default or Intentional Plan?	If you <u>do not</u> have a will or trust, **this <u>does not</u> mean you do not have an estate plan**. You do! As a resident of Arkansas or someone who owns real property in Arkansas, your "default estate plan" has been written for you by the state of <u>Arkansas and the Federal government</u>. If this is your estate plan, you should determine whether your property shall pass as you wish under Arkansas state law and the Internal Revenue Code. If it does not reflect your wishes, your <u>plan should be written according to your wishes</u>—using what I call "the intentional plan" method. If you have acted intentionally and had documents prepared to reflect your wishes, such as a will or trust, these existing wills or trusts should be reviewed. Has anyone named in the document passed away or become estranged from you? Do you want to do something different than what the will or trust says? Have any additional children been born or adopted since the documents were signed? Have you recently married or divorced since the documents were signed? Have you moved to a different state? Finally, has someone named in your will become disabled? If you answered "yes" to any of these questions, most likely changes need to be made. This may be a simple codicil to your will or amendment to your trust. Or, it may require more significant changes depending on your situation.
	WARNING! If you have a revocable or living trust, has it been reviewed under the Arkansas Trust Code. That law became effective September 2005. It requires such things as notices that most of my clients would prefer to waive, which can be done under the terms of the trust.
• Is the FMV of all assets near $1,000,000 including land values, equipment, life insurance and retirement accounts?	**2. <u>Consider Whether Tax Planning Is Necessary.</u>** The second step requires that you make a list of all your investments and real property and assign values to each asset. Make sure to include the

	value of life insurance and retirement accounts (before income tax) that will be paid in the event of your death. Do your total values owed by you and your spouse add up to more than $1,000,000, or close to it? For household furnishings, use the garage sale value or figure 10% of the value of your home for your home furnishings. If all your investments and real property owned by you and your spouse are valued near $1,000,000, it is time to consider **estate tax planning**. Otherwise, those amounts exceeding $1,000,000 may be subject to estate tax at your death. NOTE: Recent changes and anticipated changes to estate and gift tax laws may or may not warrant a change to existing tax planning and a change to the above $1,000,000 exemption amount.
• Do you have current comprehensive property durable powers of attorney?	**3. Disability Planning**. Statistics prove that we all are more likely to face a disability in the next year rather than death. Thus, it is important to plan for disability or incapacity. This step requires a review of any powers of attorney you have signed. Does it appoint someone other than those persons you most trust? Is it more than five years old? If you have answered "yes" to either of these questions, you most likely need an updated document. *(In fact long-term care planning has been impacted significantly by a law passed in February 2006.)*
	You should consider whether you need to give someone authority to handle tax matters for you, make gifts to your spouse, establish a trust, revoke a community property agreement or qualify you for Medicaid if it becomes necessary. If any of these provisions seem appropriate and are not included in your power of attorney document, you most likely need an expanded durable power of attorney.
• Do your young adult children have current POA's for health, assets, education?	**4. Dependent Children Over the Age of Seventeen.** Many of us have children over the age of seventeen years for whom we are still responsible--like our college age children. Because these children are considered an adult under the law, they also need to have signed proper powers of attorney. In the event of the child's disability or incapacity, they would need someone to handle their property, sometimes their educational issues, and their health care. This becomes most crucial when considering the college student who becomes ill while away at school. Under the HIPAA regulations mentioned below, without a properly prepared Health Care Power of Attorney signed by the student, we, as parents, can be left without any method, other than Court order, to have communication or input into their care.
• Do you have current health care directives?	**5. Terminal Illness & Life Support**. Arkansas law requires that medical practitioners provide all known means of medical technology to keep you alive. If you are in a terminal condition and do not want to be kept alive by life support, you should execute a health care directive expressing your wishes. Along with the directive, you should sign a health care proxy, basically giving another person your power of attorney for your health care in the event that you are unable to communicate directions.

	In April 2003 the Health Insurance Portability and Accountability Act of 1996 (HIPAA) took effect. This is the statute, along with its regulations, that govern the use and release of a patient's personal health information. The statute imposes serious criminal restrictions against the health care provider for releasing protected health information.
	Another event within the last few years which directed the nation's attention to the need to update your health care documents occurred in the Spring of 2005. At that time, we watched the end of a more than 15 year life and death struggle of the young woman, Terri Schiavo. The attention centered around the disagreement between her family and estranged husband over the continued use of life support. If your health care directives were signed prior to either of these two events, they need to be updated.
• Are your beneficiary designations consistent with your Estate Plan?	**6. <u>Coordinate Death Beneficiary Designations</u>**. Have you opened a qualified retirement plan or IRA recently? Started a new job where you qualify for a 401(k)? Purchased life insurance or signed a "P.O.D." or "T.O.D." designation for a bank account or brokerage account? If the answer is "yes" to any of these questions, they must be coordinated with your estate plan. If you have special tax planning provisions in your will or other special testamentary trust provisions, your estate plan must be coordinated with these designations, or your plan will not be achieved.
• A will means probate; have you considered a trust?	**7. <u>How Property Passes At Your Death</u>**. Periodically you should consider whether your estate should pass through court supervised probate or another process, for example, a revocable trust. Generally, probate is the court supervised procedure that transfers property from a deceased person to heirs or beneficiaries. Probate can have advantages in that creditor's claims can be finalized and disgruntled heirs can have their claims heard by a judge. Arkansas has a method by use of an affidavit to handle small estates of less than $100,000 in value. However, this may not be appropriate for your estate. Today, revocable trusts are the most common method used to avoid probate.
• Are your assets unnecessarily at risk due to being owned by a party with a high risk occupation?	**8. <u>Do You Own "Hot" Assets Or Work In A "High Risk" Occupation?</u>** Are your assets of the nature that may produce liabilities to you, such as injuries on your rental property? Or are you considered a person with a high-risk occupation—subject to lawsuits, such as a crop duster, brain surgeon, airplane mechanic, farmer, attorney, or serve on the board of directors for public or private companies? If you answered "yes," you need to consider asset protection planning. It is possible that carefully structuring the ownership of your assets may spread or reduce your risks. ***(But note, this type planning is only possible before a claim is apparent and only if the end planning result still allows sufficient assets to pay then existing debts.)***
• If you have a revocable trust, are all appropriate assets titled in the trust name?	**9. <u>Is Your Trust or Will Funded</u>?** If you have a revocable trust, are all appropriate assets owned by

	the trust? Did you or your attorney complete the funding of the trust when it was prepared? Have you acquired new assets since signing the trust, and were those acquired in the name of the trust? And if you do not have a trust, but plan to use only a will, are the assets owned properly so that the will can control the assets for the most effective estate and income tax planning purposes and in order to accomplish the desires expressed in the will? If you answered "no" to any of these questions, you need to update your funding. A trust can only control what it owns; and a will can only control what goes through the probate of the estate.
• Have you evaluated your need for long-term care insurance?	**10. <u>Impact of Long-Term Care on Your Estate Plan</u>.** Finally, are you uncertain as to how you would pay for long term care if it was necessary? Knowing your options is important. Further, does your estate plan need to take long-term care into consideration? If you answered "yes" to these questions, you need to consider a long-term care plan.
• **SET A GOAL DATE NOW FOR COMPLETION OF ANY ITEMS NEEDING REVIEW:** ○ **by ____________, 2011**	If you have answered "yes" to any of these questions above (except a "no" under paragraph 9), you should promptly seek legal advice to revise or update your plan.

<u>FEDERAL ESTATE TAX (PER TAX LAW PASSED 2001 & 2010)</u>

TAX RATES--37% to 55%

Exemption	**Year**
$1,000,000	**2002-2003**
$1,500,000	**2004-2005**
$2,000,000	**2006-2008**
$3,500,000	**2009**
Repealed	**2010***
$5,000,000	**2011-2012**
$1,000,000	**2013**

<u>Caveat</u>: In 2010--No Estate Tax, but **<u>also no full step-up in BASIS*</u>**!!! Currently the law sunsets in 2013. That is, on January 1st, 2013, the estate tax rate will return to its pre-Bush levels. Practically speaking, this means the difference between dying on December 31, 2012 and January 1, 2013 can mean 55 % of $10 million--if your joint estate reaches that level!

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<u>OTHER NOTES OR COMMENTS RELATED TO MY ESTATE PLAN</u>