


LAW 4 YOU

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AMENDING DOCUMENTS

Life changes for everyone in often unexpected ways. Five years ago I was practicing law in California, my husband was working as a police officer, and our only real responsibility, outside of taking care of each other, was to look after our dog. And then our first happy life change happened. I learned that I was pregnant with our daughter Jenny.

Later that same year we, and the nation, were faced with a greater life change, 9/11. The attack on our country has caused millions of people to realize that they need to have their finances, trusts, wills, and medical health directives in order. For me, and my now growing family, 9/11 caused an additional, unexpected change. My husband would be called for active duty. He had a choice to take an assignment at the Pentagon or to go overseas. As many of you know, we elected to move to Northern Virginia where my husband took the “stateside” position working at the Pentagon. I embarked on moving my practice and now work coast-to-coast.

These life altering events reminded me how important it was to have my own legal affairs updated and accurate. I was prepared for the change that surrounded my first child. I was unprepared for our nation and possibly my husband entering a war.

I know it is easy for me to amend or completely restate my personal trust because I am an attorney. I also don't have to pay legal fees for the time it takes to make the changes and file the necessary paperwork. I understand that many

people drag their heels because they do not want to revisit what can be an unpleasant life reality; and they don't want to spend money to make a change to something that is legally sound.

However, life isn't static. Life is constantly changing and evolving and as a result, our plans must change too.

OK, what is my point? My point is that it's necessary to handle change in a way that you are not harmed by it. Many times I review trusts with three or four amendments. And though I specialize in trusts, I can find these documents confusing. I also see trusts that no longer serve the needs of the family they have been written for. I feel it is better to restate and completely amend an estate plan rather than make too many changes to individual pages. It is essential to remember that there will come a day when the trustee or executor will have to read the plan and understand what you intended to happen. If your trust is confusing, or you have chosen to give one child more than another, you will create an opportunity for litigation or at least judicial interpretation.

What I find even worse is when people amend their own documents by crossing out provisions, writing in changes, and initially the wording. I have even read documents where the amendment has been handwritten. While this sort of editing does not invalidate the document, it does make it hard to understand what the writer wants to happen. Additionally, if the writer is not an attorney, and did not meet all of the legal requirements for an amendment, then

that amendment may be invalid. There can also be a question of whether your actual intent is to revoke the entire document, not simply the amendment.

The reality of change when it comes to your wills and trusts is that in order to avoid bigger problems and legal fees it is best to consult with an attorney. It is far cheaper to do it right the first time then try to go back and fix it later. *L+Y*

DO-IT YOURSELF LAW: PROCEED AT YOUR OWN RISK

"Why should you pay a skilled attorney to draft a document when you can now download a free form and instructions from the Web and customize it in minutes?"

I hear that question often. The answer can be found in case law. It's full of do-it yourself legal work that has gone wrong, horribly wrong. Here's what can happen to a do-it yourselfer.

Estate Planning

A man writes his own estate plan and creates his own will. What he doesn't realize is that he has made some drafting errors in how he leaves his estate to his wife and children. As a result, there was estate tax due that could have been avoided had he hired an attorney. An attorney would have known that generally there is no estate tax on assets that pass from spouse-to-spouse. The attorney would have known how to take advantage of maximizing his tax-free exclusions.

The widow hired a lawyer to represent the family in tax court. Fortunately, the attorney was able to mitigate some of the tax burden due to a change in the state law. However, this legal assistance did not come for free and in the end, his family paid dearly in legal fees, unnecessary tax, and most costly the emotional toll. It would have been far cheaper to have hired an attorney to draft the original documents.

Legal Entities

In another case, a family sets up an LLC to use for estate planning and asset protection. The

family puts all of their assets, house, vacation home, and valuables into the LLC that is owned by the parents and their children. Unfortunately, when the parents died the IRS had a problem with the LLC. They said the LLC had no real business purpose because the family never treated it as a real business. There was no business bank account, meeting minutes, or documentation. It's only true purpose was to reduce the size of the estate through discount valuations. It did not work.

This scenario also appears over and over in the asset protection arena. Courts are disregarding the business entities because owners are not respecting the entity. They commingle personal and business assets. They do not have books, operating documents, and minutes.

I've also been reading about people who use generic documents. Anyone can go out on the Web and for \$250.00 set up an LLC, Corporation, Partnership, or Trust. You fill out a brief questionnaire and poof; you get a book in the mail. If you set up a Corporation you get some Articles of Incorporation, Bylaws, and even sample minutes. It "appears" to be both cheaper and easier than hiring an attorney.

Then one of the following happens:

- you get sued
- the co-owner of your business and you have a falling out
- the co-owner of your business (a family member) and you have falling out
- the co-owner of your business dies or becomes disabled
- you die or become disabled

Now suddenly this generic one-size-fits-all document doesn't fit at all. It has to be used to settle a dispute or control how your interest passes or protect you from personal liability. Typically these documents do not address all situations or state what you need it to state. You or your family are then stuck litigating the situation with a bad document or to save legal fees, you just walk away. One of the worse cases is your surviving family is not properly cared for because your business interests were not properly protected.

Do it yourself legal work or legal work for bargain prices are both perfect examples of the old phrase: *Penny wise and pound foolish*.

I have learned, and many of my colleagues who litigate agree that we attorneys make far more fees on people who do it themselves than from the ones who let us to do the work in the first place. *L+Y*

ESTATE TAX UPDATE

Dateline: Washington, D.C.

The Estate Tax Repeal was voted down by the Senate. Now a new measure is up for consideration with a 5- million dollar exemption per person and a reduction of the estate tax rate to the capital gains rate with some caveats. This measure was supposed to be subject to a vote before the summer break however, the vote did not go forward. Rumor has it that the measure did not have enough support to pass so it was tabled until changes could be made to make it more palatable. *L+Y*

EMPLOYEE VS. INDEPENDENT CONTRACTOR

One of the questions I am often asked by people starting a new business or changing a business' structure is the difference between an employee and an independent contractor. It's important for tax planning and tax filing purpose to understand the difference.

The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. The factors are designed only as guides for determining whether an individual is an employee. It is best to speak with your accountant about the specific situation to make sure you are not making a mistake.

- **Instructions**

If a worker is required to comply with another person's instructions about when, where, and how he or she is to work that person is ordinarily an employee.

- **Training**

If you require or provide training to a worker or have an experienced employee to work with the worker, or require the worker to attend meetings and perform services in a particular method or manner, that person is ordinarily an employee.

- **Integration**

If a worker's services are integrated into the business operation, and the worker is subject to direction and control, that person is an employee. If the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the worker who performs those services must necessarily be subject to a certain amount of control by the owner of the business and is ordinarily an employee.

- **Services Rendered Personally**

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work, as well as in the result, that worker is an employee.

- **Hiring, Supervising, and Paying Assistants**

If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires supervises, and pays the other assistant pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status.

- **Continuing Relationship**

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may also exist where work is performed at frequently recurring although irregular intervals.

- **Set Hours of Work**

If you set hours of work for the person or people who perform services those people are employees.

- **Full-Time Required**

If the worker must devote substantially full-time hours to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time

the worker spends working and impliedly restrict the worker from doing other gainful work, those workers are employees.

An independent contractor is free to work when and for whom he or she chooses

- **Doing Work on Employer's Premises**

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at an office, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

- **Payment of Business and/or Traveling Expenses**

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee.

- **Furnishing of Tools and Materials**

If you provide tools and equipment for a worker, it indicates an employer-employee relationship.

- **Significant Investment**

If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, that factor tends to indicate that the worker is an independent contractor. *L+Y*

CALIFORNIA OFFICE HOURS

I'll in California August 10th through August 13th. If you would like to schedule an appointment to discuss any updates to your legal documents or know of any family or friends who have wanted an appointment, please call me as soon as possible at 714.527.7147

**Schedule your California Office
Appointment Today!
Call 714.527.7147 or email
rhonda4law@aol.com**

***Rhonda Miller** has serviced hundreds of estate plans and business entity plans. She recognizes that developing estate plans and legal business structures involves highly sensitive materials, emotional decisions, and confidentiality. She takes the time to get to know her clients and their needs and she goes a step further. Rhonda makes house calls. Unlike traditional law practices where clients meet in intimidating and busy legal offices, Rhonda works with clients in their homes or remotely to provide them with a sense of ease and comfort. In this way she is better able to serve her clients' needs and recommend solutions that work for them.*

Your life and your business are unique. Your legal services should be too!

This newsletter is intended to be a guide about legal issues and it is not intended to be legal advice, legal representation, or advice that can be relied on to avoid any penalties that the Internal Revenue Service may assert because of a successful challenge to any position taken on a tax return. Due to the rapidly changing nature of the law, I make no warranties or guarantees of the accuracy or reliability of the information contained herein.

PROFESSIONAL AFFILIATIONS

Virginia State Bar
California State Bar
Northern Virginia Estate Planning Council
Fairfax County Bar Association
Orange County Bar Association
Soroptimist International
Canine Support Teams
Herndon Dulles Chamber of Commerce
Reston Chamber of Commerce