



Estate Planning Considerations in Divorce

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Going through a divorce, your estate plan may not be top of mind. Here's why you should visit your existing plan when you start the divorce process.

Mid-Divorce:

- **Your soon-to-be ex-spouse likely holds various roles in your existing estate planning documents. They are likely a fiduciary (Agent under Power of Attorney, Medical Agent, Trustee, or Personal Representative) and a beneficiary.**
- **They are also likely a beneficiary on retirement and life insurance assets.**

If your current plan does not reflect your wishes, you do not have to wait until the divorce is finalized to update it. Note, however, that as long as you are married, and unless they otherwise waive it, your spouse is entitled to an “elective share” if you pass away. This means that while you can effectively remove a spouse from fiduciary roles, you cannot fully disinherit them without their consent. Couples in an amicable situation may wish to waive the elective share during the divorce process.

It is also worth noting that, for purposes of intestacy (i.e. if you do not have an estate plan), state law does not distinguish between the rights of a spouse and an “almost-ex-spouse”. Unless you have a will or trust that says otherwise, if you pass away during the divorce process without a will, your spouse will inherit up to your entire estate.

Post Divorce:

Once your divorce is finalized, it is crucial to update your existing estate planning documents, if you have not done it already. State law has varying provisions that may revoke a prior spouse's role in certain documents and may revoke other documents entirely. Other documents and beneficiary designations are not impacted by divorce. It is also crucial that your estate plan reflects any requirements of your Marital Settlement Agreement related to real estate, life insurance, and beneficiaries.

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