

What Divorce Professionals Need to Know About Estate Planning

Help Your Clients Protect Themselves and Their Loved Ones

Presented by: Shannon P. McNulty, Esq.

www.thevillagelawfirm.com



Why Is Estate Planning an Integral Part of Divorce?

- Legal Relationships
- Positions of Trust
- Money
- Children
- Future Plans



Questions for Divorcing Clients

- ✓ Would you want your spouse to inherit all your assets?
- ✓ Would you want your spouse to manage the money you left to your minor children?
- ✓ If you became incapacitated, would you want your spouse to make legal and financial decisions for you?
- ✓ If you were on life support, would you want your spouse to decide whether you lived or died?
- ✓ If you passed away, would you want your spouse to have access to all your financial information and personal items?



If the answer to any of these questions is NO...

The client needs to update
their estate plan





Agenda

- **Before Divorce: Effect of Filing and Automatic Orders**
- **Estate Planning Issues Arising During Divorce Process**
 - **Trust Issues**
- **Estate Planning Issues After Divorce**
- **Case Studies**

Divorce Filing: Automatic Orders

- Effective upon initial filing.
- Prevent asset transfers excessive spending, debt.
- Prohibits changing beneficiaries for:
 - Life insurance
 - Qualified Retirement accounts
- Does not restrict changes to:
 - Healthcare proxies
 - Powers of attorney
 - Wills/Revocable Trusts



Filing for Divorce Has No Effect on Estate Plan/Default Rules



- Prior estate documents remain valid.
- Review estate documents:

1. Are assets left to spouse?
2. Is spouse named as executor in Will?
3. Is spouse named as healthcare proxy?
4. Is spouse named as power of attorney?

During Divorce



Default Rules

- **In the absence of a Will or Trust:**
 - Spouse may be entitled to everything.
 - Spouse has priority to serve as administrator of estate.
 - Spouse would be in charge of managing assets left to a minor child.
- **In the absence of a Healthcare Proxy:** Spouse has authority to make medical decisions.
- **If Will cuts spouse out, spouse entitled to 1/3 of estate (in absence of preup).**

What Clients Can Do Before Divorce Is Final

- Update/create estate documents.
 - Healthcare Proxy
 - Power of Attorney
 - Will (spouse retains right of election)
 - Trust



During Divorce: Trusts

Unwinding prior estate planning:

- **Revocable Living Trusts (Will Substitute)**
 - Individual Trusts: Can be amended by grantor
 - Joint Trusts: Amendment may require consent of both parties.
- **Irrevocable Trusts**
 - Can be changed if all parties agree – UNLESS minors are beneficiaries.
 - Changing trust may have gift/estate tax consequences.
 - Beneficiary (non-moneyed) spouse can use disclaimer as bargaining chip.

During Divorce: Trusts

Are third-party trusts an available resource?

- Who are the beneficiaries?
- Who is the trustee?
- What is the distribution standard?
- How is the trust administered?
- Pattern of distributions?

During Divorce: Trusts

Protecting Client/Children in Event of Former Spouse's Death

- Life insurance, trusts.
 - Clearly specified?
 - Manner of enforcement?

Effect of Final Order of Divorce on Estate Plan



- **Automatic Revocation:** Spouse treated as predeceased in Wills, POAs, Healthcare Proxies.
- ERISA retirement account beneficiaries **NOT** automatically revoked.
- Fiduciary appointments of former in-laws not revoked.
- Bequests to former in-laws not revoked.

Estate Planning Updates After Divorce



- Update beneficiary designations.
- Update estate planning documents; Protect privacy/minimize interference with Revocable Living Trust.
- Execute estate planning provisions in divorce agreement: Wills, life insurance, trusts.

Make sure other party fulfills obligations!

Estate Planning Considerations After Divorce

- Trust for children: Protect assets.
- Custody of Minor Children.
- Parents with minor children vulnerable without will.
 - Ex-spouse is appointed to manage child's inheritance.
 - Ex-spouse has right to serve as administrator of estate.





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Example #1:

Failure to Plan with Minor Children

Meet Jane

Jane, Age 37

A devoted mother doing her best to build a stable life for her daughter after a difficult divorce.

Leah, Age 3

Jane's precious daughter, the center of her world and the reason she worked so hard every day.



The Divorce That Changed Everything

The Breaking Point

Jane divorced Jon a year ago after years of struggle. He refused to maintain steady employment and rarely contributed to household responsibilities.

Starting Fresh

Jane focused on rebuilding her life and creating stability for Leah. She worked hard, saved diligently, and dreamed of securing her daughter's future.

The Missing Piece

In the chaos of divorce and single parenting, Jane never thought about her estate planning documents. She had no will, no guardianship designation, and no asset protection plan.

Tragedy Strikes

Jane was killed in a car accident.

In an instant, everything she had worked so hard to build was left unprotected—and the decisions about Leah's future were no longer in her control.

Without a will or estate plan, the law determined who would manage her affairs.



The Automatic Consequences



Custody Goes to Jon

As Leah's surviving parent, Jon automatically received sole custody.



Assets Pass to Leah

Under intestacy laws, all of Jane's carefully accumulated assets went directly to three-year-old Leah, who couldn't manage them.



Court Appoints Manager

The court had to appoint someone to manage Leah's inheritance until she turned 18. The law gave first priority to Jon.

Jane's Mother Tries to Help



A Grandmother's Heartbreak

Jane's mother desperately wanted to manage the assets for her granddaughter.

Jon refused, and the law was on his side.

The very person Jane divorced for financial irresponsibility now controlled her daughter's entire inheritance.

Jon Takes Control of Everything

Full Financial Control

Jon gained complete control over all of Jane's assets—the same person who refused to work and mismanaged money throughout their marriage.

Access to Personal Items

As estate manager, Jon had to go through all of Jane's personal belongings, documents, and private possessions.

Paid for His Services

Adding insult to injury, Jon received compensation from the estate for managing Jane's assets and affairs.

Everything Jane worked for ended up in the hands of the person she least trusted.

What Jane Could Have Done Differently

01

Create a Will with Guardian Designation

Name a trusted person (like her mother) to raise Leah if something happened. The court gives significant weight to a parent's written wishes.

03

Name a Trustee She Trusted

Select a responsible person (or professional) to manage the money—someone with proven financial judgment and Leah's best interests at heart.

02

Establish a Trust for Leah

Place assets in a trust managed by someone she chose, with clear instructions on how funds should be used for Leah's care, education, and wellbeing.

04

Update Documents After Divorce

Review and revise all estate planning documents immediately after major life changes to ensure they reflect current circumstances and wishes.



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Example #2:

Failure to Update Documents
after Divorce



A Common Assumption

Divorce = Clean Slate

Many believe divorce automatically revokes all estate planning tied to a former spouse

The reality? Far more complicated.

Meet Dillon: A Cautionary Tale

01

Marriage

Created comprehensive estate plan with wife as primary beneficiary and fiduciary, sister-in-law as alternate fiduciary, and mother-in-law as a beneficiary.

03

No Updates Made

Never reviewed beneficiary forms or estate documents

02

Divorce Finalized

Assumed all estate designations were automatically revoked

04

Unexpected Death

Family discovered devastating oversights

Divorce Did *Not* Automatically Revoke:



401(k) Account Beneficiaries

Fiduciary appointments of in-laws

Bequests to in-laws

Dillon's Costly Oversight

The Beneficiary Designation

Ex-wife received his \$1M retirement account.

Executor Appointment

Divorce revoked appointment of ex-wife, but not her sister as alternate executor.

Bequest to Mother-In-Law

\$100,000 went to his former mother-in-law.



Post-Divorce Estate Planning Checklist

- 1 Review ALL Beneficiary Designations**
- 2 Update or Replace Will**
- 3 Revise Trust Documents**
- 4 Review Powers of Attorney and Healthcare Proxies**
- 5 Create an Estate Plan if You Don't Have One**



THE
VILLAGE
LAW FIRM

www.thevillagelawfirm.com

info@thevillagelawfirm.com

Tel. 212.431.PLAN