LEGACY ASSURANCE PLAN

Divorce and *Estate Planning*

Divorce is one of life's most painful and life-altering events. For many, it feels like a death without a burial. The emotional and financial stress caused by the end of a marriage often means that estate planning is not on many people's minds, but it should be. Though frequently overlooked, estate planning is a critical part of the divorce process.

Estate plans need to be reviewed, revised and replaced after any significant life event, especially divorce. This update needs to include more than just a new will and power of attorney. Estate planning after divorce needs to address your entire estate plan, including your financial, health care and legal documents.

Most married couples have estate plans that name each other their personal representative, agent under powers of attorney and beneficiary. However, following a divorce, it's unlikely that the former spouses want each other to inherit their estates or retain control over their assets or health care decisions if they become incapacitated. Your estate plans will require updating as wishes and intentions change after divorce.

Estate planning after divorce begins with finding a new estate planning lawyer. The attorney who created the estate plan for you and your spouse while you were married cannot ethically work with either you or your spouse individually. In many states, the attorney must notify their client, your former spouse, of any changes you make to your estate plan. As a result, and as part of the start of your new life after a divorce, you need to find your own attorney who does not have any responsibilities to your former spouse. Not all attorneys are the same. It is important to find a knowledgeable attorney who specializes in estate planning.

This booklet highlights some of the most common concerns for estate planning during and after a divorce. There are several unique estate planning challenges that only individuals who are divorced have to worry about. It is crucial that you are aware of the potential issues that could arise so that you can protect yourself and your children.

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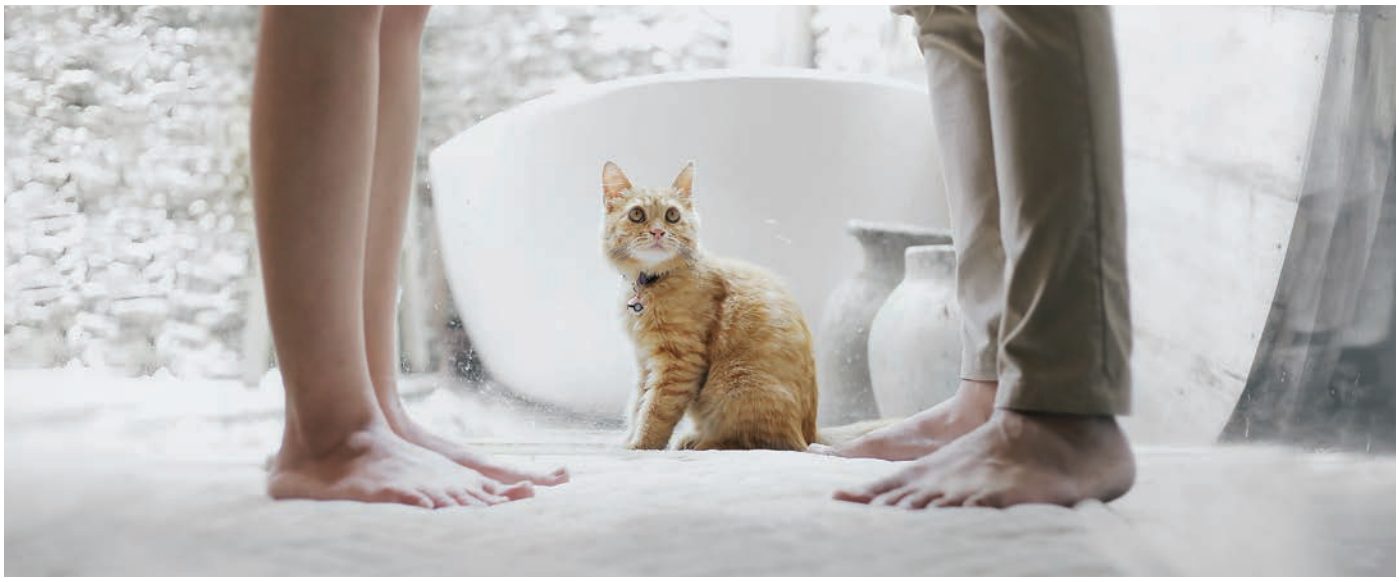

You should not wait until your divorce is finalized to update your estate plan. Many people delay updating their estate plans until their divorce is over, believing that they cannot change their plan during divorce proceedings. This is a mistake. To fully protect yourself, you should revise your estate plan when the relationship ends, not when the marriage is legally terminated.

When you are revising and updating your estate plan, you should understand that in most states, you cannot completely disinherit your spouse until the divorce is final.

You may be hesitating to update your estate plan because you believe your spouse will be notified of changes, complicating the divorce negotiations. This fear is not valid. Separated spouses do not need to inform their partner of changes to their personal estate plan. However, there are exceptions that you should be aware of. Any beneficiary change to a retirement account requires the spouse's permission if made before the divorce is final. Additionally, spouses cannot give away assets during a divorce proceeding that would be subject to equitable distribution ("marital property").

It is important not to wait to create a new estate plan because divorces can drag out over many years. Take, for example, Kaitlin and Chris, whose highly contested divorce was drawn out over five years as they fought over the division of their family business. During this time, Kaitlin never updated her estate plan, which left all her property to her husband, Chris. Five years after they separated, but before the divorce was finalized, Kaitlin unexpectedly passed away. Despite the fact that they no longer had a relationship, Chris inherited everything, and her estate eventually flowed to Chris' second wife. To ensure that this does not happen to you, separated spouses are encouraged to reach out to an estate planning attorney early on in the divorce process.

When you are revising and updating your estate plan, you should understand that in most states, you cannot completely disinherit your spouse until the divorce is final. State law gives spouses the right to "elect against" your estate and claim a substantial part of your estate. Even if you die after signing a new will or trust that leaves them nothing, if your divorce was not finalized, your spouse might have the right under state law to force the court to give them a portion of your estate. Every state has different rules, so it is important to get advice from an estate planning professional. For example, in Florida, the elective share is 30% of the estate, but in Pennsylvania, the elective share cannot be exercised during divorce proceedings.

IMPACT OF DIVORCE DECREE

Many people who get divorced overestimate the effect of a divorce decree on their estate plan. It is a common mistake to believe that a divorce decree automatically invalidates all of the estate planning documents and beneficiary designations of both former spouses. It is much more complicated than that. The effect of a divorce decree on your estate plan depends on both the type of estate planning document and the state that you live in. The laws of each state vary dramatically and are often more limited than what you would assume.

Divorce decrees will almost always impact your will. In nearly every state, a divorce decree will invalidate any provisions that leave property to your former spouse. This means that your will is still valid, but your former spouse is treated as if they died before you. Therefore, if you named an alternate beneficiary, they would inherit the property. If there is no alternate beneficiary designated, the residuary beneficiary will inherit what originally went to your former spouse.

However, if you named your former spouse as your personal representative or executor, they typically will not be automatically removed if there is a divorce decree. You have to update your will and pick a new personal representative.

As important as understanding what a divorce decree will change is understanding what a divorce decree will not change. In most states, a former spouse is not automatically removed as power of attorney agent, health care agent or the named beneficiary on a bank account or life insurance policy.

Additionally, a divorce does not invalidate the naming of a former spouse as a beneficiary on your retirement account. Under federal law, the administrator of a retirement account must pay the account balance to the listed beneficiary in the plan records, even if it is a former spouse. After your divorce is finalized, you must remember to change the beneficiary of your retirement accounts so they are consistent with the terms of your divorce decree. Otherwise, your retirement account could end up in the hands of your ex-spouse.

It is always the best course of action to change your estate plan instead of relying on state law. Your entire estate plan (legal and financial) needs to be reviewed, updated and replaced after a divorce, including:

- Last will and testament
- Revocable living trust
- Health care power of attorney
- Financial power of attorney
- Advance directive
- Deeds
- Vehicle and other asset titles
- Life insurance beneficiaries
- Retirement account beneficiaries
- Annuity beneficiaries
- Pay-on-death account beneficiaries
- Transfer-on-death account beneficiaries
- Online account usernames, passwords and contact emails

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Many times, your parents and other family members have also included your ex-spouse in their estate plans. You should encourage your family members to review their own estate plans to confirm that any inheritance intended for you or your children does not end up being received by or placed under the control of your former spouse.

PLANNING FOR INCAPACITY

Estate plans serve multiple purposes. As well as determining how your assets will be distributed at death, your estate plan states who will make financial and medical decisions on your behalf if you become incapacitated. An advance directive and powers of attorney are the documents typically used to govern these situations.

Spouses generally name each other as their financial power of attorney and health care agent. However, after you get divorced, you typically do not want your ex-spouse controlling your assets or determining the course of your medical treatment if you become incapacitated. In most states, a divorce decree will not automatically remove your former spouse as your agent, even if you have a backup person named in the document.

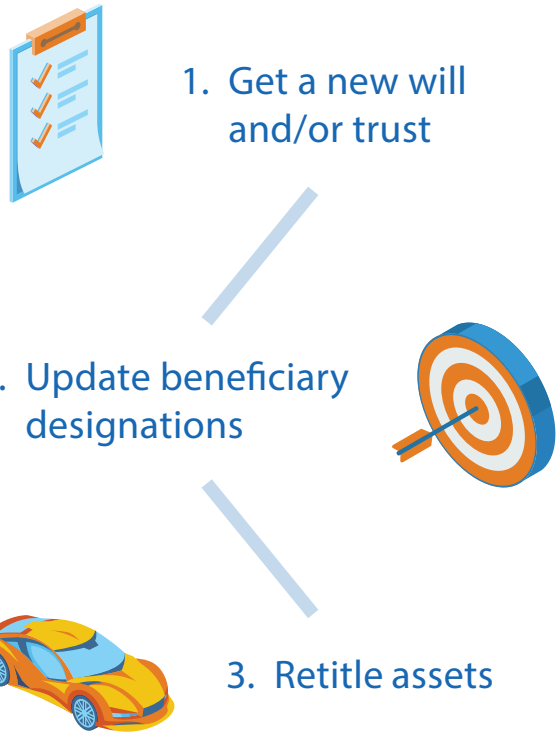
You must take affirmative action to sign new powers of attorney and specifically revoke your old powers of attorney naming your ex-spouse as your agent. In your updated documents, you should expressly state that the new agent has the authority to determine who can visit if you become incapacitated.

Additionally, you should contact all the people and institutions that have your old advance directives and powers of attorney on file to inform them of the changes. This could include places such as hospitals, long-term care facilities and banks. You should provide them with a copy of the written notice that you revoked the prior power of attorney or advance directive along with a copy of the new documents.

PLANNING FOR ASSET DISTRIBUTION

A major area of contention in divorce is property distribution. Spouses can spend months and even years deciding who gets what after they separate. A critical part of this process, often overlooked, is updating your estate plan to reflect the changes in how you want your property distributed at your death. If this step is skipped, your property could be distributed in ways that you did not intend — perhaps even falling back into the hands of your ex-spouse.

There are three major steps that you should take to plan for asset distribution during a divorce:



The new will, trust and beneficiary designations need to be fully consistent with the terms of any property settlement agreement.

WILL AND LIVING TRUST

If you were like most married couples, your will and trust left everything to your spouse. And if you are like most divorced couples, that is not what you want to happen now. The first step you should take to make sure this does not occur is to revoke your old will and trust.

After you revoke your old will and living trust, new ones are needed to distribute your assets the way you want at your passing. After such a significant life change, it is important to make sure that your estate will be divided up in the way that you want.

As noted above, it's not necessary or advisable to wait until a divorce is final to create a new estate plan providing how you want your assets managed and distributed. The law in most states considers couples married until the final divorce decree is signed. Therefore, you should reach out to an estate planning attorney when you begin the divorce process. However, once the divorce is over, you must ensure that the new will and trust are in complete agreement with the property settlement.

BENEFICIARY DESIGNATIONS

A critical part of estate planning after divorce is updating your beneficiary designations. If you were married, you most likely had your spouse named as the beneficiary to these accounts, which you will now need to change. Some examples of accounts that have beneficiary designations include insurance policies, annuities, retirement accounts, brokerage accounts and bank accounts.

Finally, in addition to accounts with beneficiary designations, you also need to update the beneficiaries on your bank accounts with pay-on-death (PoD) designations and assets (like securities accounts) with transfer-on-death (ToD) designations.

In each case, you need to contact the involved institution and request the proper form to change beneficiaries. You should immediately complete and return the form. It is critical to confirm that the institution's records are updated. If you filled out the form incorrectly, the institution might not have changed your beneficiary.

You must be proactive and take responsibility to ensure that your accounts are in order because a divorce decree does not automatically change beneficiary designations. It is your responsibility to take this step. As noted above, this is especially important for retirement accounts because they are governed by federal law. Even if the divorce decree addresses these issues, the beneficiaries need to be changed to avoid problems later.

Take into consideration the example of Ann and Thomas. In the divorce decree, there was a stipulation that Ann would be removed as the beneficiary on Thomas' retirement plan. However, due to simple forgetfulness, Thomas did not contact the institution and update his beneficiary designation. When he unexpectedly passed away three years later, Ann was still the sole named beneficiary, and the plan proceeds were paid to her. Thomas's children fought to recover the money, but the court ruled that Ann was entitled to the proceeds because she was still named on the plan at the time of the death. The children were left with nothing except expensive attorney's fees. To avoid this situation, all Thomas had to do was complete a change of beneficiary form.

RETITLE ASSETS

In addition to updating your will, trust and beneficiary designations, you have to retitle your assets to reflect any changes made during the divorce. Divorce decrees and property settlement agreements provide which spouse gets what property. But the decree alone is not sufficient to complete the asset division. The assets need to be retitled.

For example, with real estate, a new deed needs to be recorded. For cars, boats or other vehicles, a new title needs to be issued. The best way to avoid disputes over who owns what is to carefully and fully retitle the formerly joint assets as outlined in the divorce decree and property settlement agreement. If you changed your name as part of the divorce, you need to be sure the new deeds, titles and accounts reflect your new name.

DIGITAL ASSETS

As a part of your post-divorce estate planning, you should take precautions to protect your digital assets, as well as your physical assets. Many people have an extensive online presence that includes email, social media, subscriptions, shopping, credit cards and other online accounts. It is often much larger than you even realize. An experienced estate planning attorney can ensure that you have covered all your bases and that your former spouse does not have access to your digital assets.

As an extra precaution, you should advise the online service providers in writing that your former spouse is not authorized to access the account.

As part of your post-divorce estate planning, you should write out a list of all the transactions that you complete online. You should change the usernames, passwords and security questions for all online accounts and remove any permissions given to your former spouse. Even if you believe that an account was separate, you should still go through this process. Most people are more predictable with usernames and passwords than they think.

In some circumstances, you may even need to close an account, like an email account, and open a replacement. As an extra precaution, you should advise the online service providers in writing that your former spouse is not authorized to access the account. This additional step will protect your accounts if your ex-spouse reaches out to the service providers to request access.

Separating and protecting your online accounts during a divorce can be a daunting task, but it is critical to protecting your assets. Working together with an estate planning professional will make the job much less stressful.

PLANNING FOR MINOR CHILDREN

There are unique estate planning concerns when you divorce and have minor children. First, you have to think about who will have physical custody of your children if you die. Secondly, you must consider what property you want to be left to your children and who will be appointed guardian of the funds.

CUSTODY OF MINOR CHILDREN

In your new, post-divorce will, you should name your choice as guardian for any minor children. Your designation is not binding on the court, but it will inform the judge of your preference. The court will always make custody decisions based on what it believes is in the children's best interest.

In most circumstances, the court will grant custody to the surviving parent, but it will take your preference into consideration. Therefore, it is especially important to include your choice of a guardian if you have concerns about your former spouse raising your children. These concerns must be severe, such as a history of physical abuse or addiction.

INHERITANCE FOR MINOR CHILDREN

In addition to custody, you need to think about your minor children's inheritance – how you want it to be used and who you want to control the assets if you pass away. For this purpose, your estate plan should include a dependable person as trustee, under either a will or revocable trust, to control your children's inheritance until they reach an appropriate age. Creating a minor's trust is one of the best options for divorced parents of children and young adults. In the trust, you can dictate how you want the trustee to manage, invest and distribute the trust funds to your children. The trust can allow for distributions for things such as education, health and daily living. You can also decide when you want your children to assume control over the trust assets. Eighteen, the age of majority in most states, is still a relatively young age to manage a significant amount of wealth. If you create a trust, you can choose any age you believe appropriate. You can even decide to have the funds released in set amounts over time, so your child is not receiving everything at once.

Your first thought may be to name your ex-spouse as the trustee, but this is usually not advisable. While you may be comfortable now with your former spouse having control over your children's inheritance, circumstances change. A better option for any inheritance left for your children is to utilize an independent trustee who will manage it outside of your former spouse's control.

Many divorced parents do not include a trustee in the estate plan and mistakenly end up naming their minor children or young adult children as direct beneficiaries. There are multiple problems with this. First, if the child is a minor, the court will appoint a person to be placed in charge of the funds, potentially even your former spouse. Some courts will name a county official or office to manage your child's inheritance with court supervision. Getting funds from this person or agency can be extremely difficult and time-consuming, even if the assets are required for the child's needs.

Secondly, regardless of who is named to manage the child's inheritance, there is no way to ensure that the funds will be spent in the way that you would prefer. You lose the ability to set constraints on how the funds are distributed after you pass away.

Finally, if funds are left directly to a minor, when they turn 18, they get full control of the property. This, unfortunately, often leads to the purchase of an expensive sports car instead of college tuition. It can be particularly harmful if the child is struggling with addiction issues.

In addition to custody, you need to think about your minor children's inheritance – how you want it to be used and who you want to control the assets if you pass away.

PLANNING FOR REMARRIAGE

Many people remarry following a divorce and want to be sure that their children receive an inheritance after their passing, even if their new spouse survives them. Proper estate planning is required to ensure that your children from your first marriage are protected.

Despite the growing prevalence of blended families, state intestacy laws are still written to fit the needs of a traditional single-marriage family. If you die without an estate plan, the majority of your estate will pass to your surviving spouse. You could end up unintentionally disinheriting your children if you fail to take the necessary steps. The last thing you want is to leave your children with little to nothing.

Take, for example, Grant who had two adult children from his first marriage. He remarried in his late 60s to Kristen, a younger woman who had a 5-year-old son from a previous relationship. During their marriage, Kristen promised Grant that all his children would be taken care of when he passed away, but an estate plan was never formally created. After Grant passed away, Kristen inherited the estate after an intestate proceeding. Though Kristen and the children had a cordial relationship while Grant was alive, this relationship became strained after his passing. With complete control over the assets, Kristen kept everything for herself with it eventually all passing down her son. Without an estate plan in place, Grant's children had no right to challenge this outcome.

Several different options exist to ensure that this does not happen to you. Some possibilities include:

- Lifetime gifting
- Naming children as direct beneficiaries in a will or trust
- Using a separate trust that provides surviving spouses with income only
- Keeping your assets separate (including expenses) from your new spouse's
- Using beneficiary designations directly to your adult children for accounts that do not pass under a will or trust

It is critical to work with a knowledgeable estate planning attorney to find the options that work best for your situation .

You should also consider including a premarital agreement (or marital property agreement) in your planning for remarriage after a divorce. These documents outline what assets belong to what party and what happens to them upon a party's death or divorce. As part of a complete estate plan, a premarital agreement or marital property agreement can be used so that at least some of your assets go to your children at your passing and not to your new spouse and their family or next spouse.

PLAN WISELY, AVOID PITFALLS

As you can see, after reading this booklet, divorce comes with additional estate planning concerns. But creating a new estate plan after divorce does not need to be difficult or stressful. With the support of an experienced estate planning attorney, you can rest easy that your needs and goals will be met. A smart estate plan will avoid potential pitfalls and ensure that your wishes are carried out as you intend.

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Our goal is to educate our members on a variety of estate planning and business planning issues. As a plan member, you are part of a select group of individuals who benefit from the team of professionals and resources Legacy Plan assembled to provide its members with a complete estate planning solution.

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Legacy Plan membership provides exclusive access to a group of services, benefits, professionals and providers to assist with the creation of a complete estate plan. A complete estate plan includes legal documents, a financial plan, guidelines to successors, organization of information and periodic reviews and updates, all of which are facilitated by Legacy Plan.

Members receive access to a number of resources needed to create a complete estate plan.
The 3 primary resources are:

1. A qualified estate planning attorney.
2. The estate planning documents needed to achieve your goals and objectives.
3. A lifetime of services and benefits, including estate plan document delivery and notarization, assistance with estate plan funding, beneficiary review and designation assistance, access to a fiduciary-level financial planner, periodic plan reviews, replacement legal documents at a nominal cost and an estate settlement consultation with survivors.

Whether your goal is protecting your family the costs, delays, publicity, lack of control and hassles of probate, providing for a disabled child when you no longer can or keeping your business in the family, Legacy Assurance Plan can provide you with the information and resources you need to reach your family's goals.

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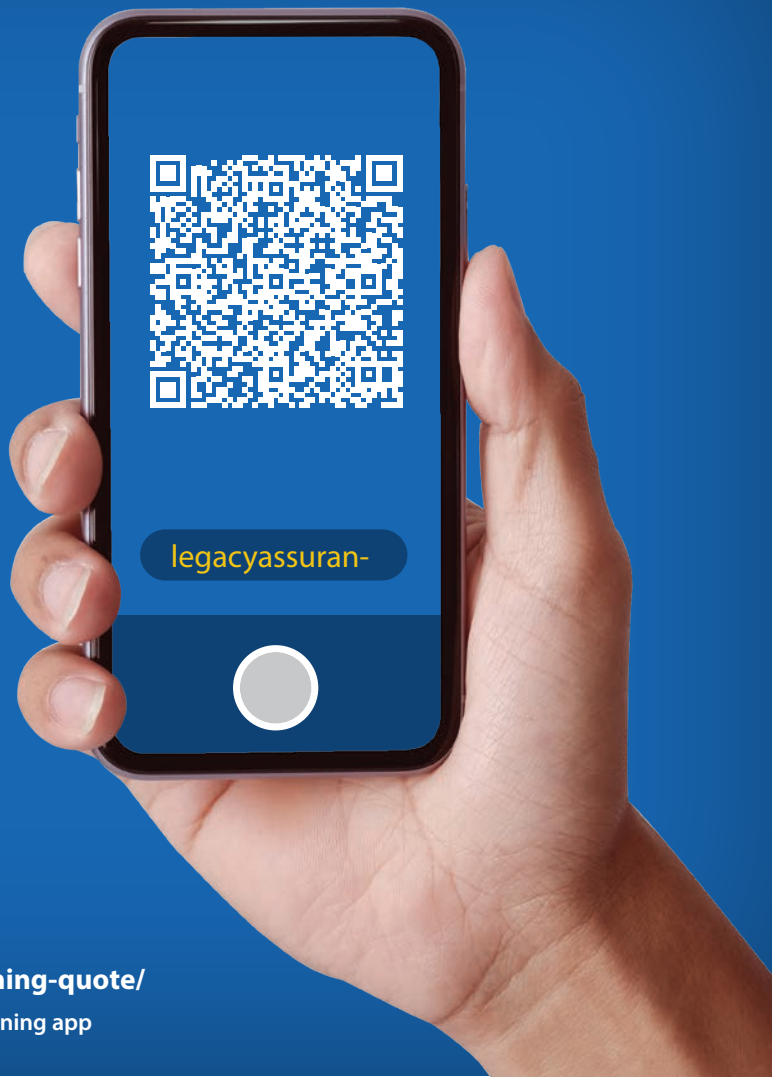

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