

Stay In Control During And After Your

Divorce...



6 Legal Documents To **Update**



6

Legal Documents To **Update**



When a divorce—also called a dissolution of marriage—is imminent, meeting with an estate planning attorney is not usually at the top of anyone’s “to do” list. *But, it should be.*

Divorces can take a fairly long time, even months or *years* to complete. **It’s important to consider what would become of your assets, or even your physical self, should you become incapacitated or die before the divorce has been finalized.**

And, for those who have made it through the proceedings, **now is the time to update estate planning documents** such as wills and trusts to remove your ex from positions of authority and name new individuals whom you trust to act on your behalf.



6

Legal Documents To **Update**



What Is Estate Planning?

Estate planning offers legal protection for families and individuals through all of life's transitions. Using tools such as wills, trusts, powers of attorney and health care directives, estate planning helps individuals protect their wishes, safeguard their assets and ensure provision and care for loved ones following their death or incapacity.

What Does Estate Planning Have To Do With My Divorce?

If you do not update your legal documents before, during or after your divorce, you could experience one of the following nightmares:

You become incapacitated during divorce proceedings and your soon-to-be ex could still have authority over your medical and financial affairs.

You die without updating key beneficiary designations and your ex-spouse stands to inherit from your estate.

Even though you meant to protect your assets for your children's use, you die before the divorce is final and your financially unstable ex gets everything, leaving the children nothing.

6 Legal Documents To Update



Won't A Divorce Automatically Prevent My Ex-Spouse From Inheriting My Estate?

Not necessarily. While some states offer estate planning protections for those who are legally divorced, many do not. And, even if you are in a state that has protections, they still will not help you if:

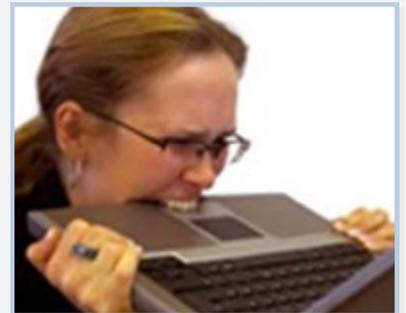
You list your ex as a beneficiary on an account outside of your will or trust. A divorce does not nullify the beneficiaries named on accounts such as life insurance policies, investment accounts and bank accounts. The divorce is NOT final. Your ex will still stand to inherit from your estate or call the shots over your affairs if something happens *during* the proceedings.

Another concern arises if you and your spouse are co-trustees or joint owners on various accounts. Again, if you become incapacitated, the spouse could access and use all kinds of property that you would not want him or her to have access to. This becomes a real worry when you realize that this person could actually buy or sell property or even take out loans without your consent.

In order to protect your interests during or after a divorce, it makes good sense to talk with an estate planning attorney. A qualified attorney can offer advice on where you may be vulnerable. You may need to work with him or her **quickly** in order to revoke key legal documents and contact appropriate financial institutions to ensure they are aware of the revocation.

Supreme Court Favors Ex-Wife Over Widow In Battle For Life Insurance Proceeds

When Warren Hillman died in 2008 at the age of 66, his assets included a life insurance policy worth \$124,558.03. For the past five years his ex-wife and his widow have been fighting over that money. Today the U.S. Supreme Court found that Judy Maretta, who Hillman divorced 10 years before he died, was entitled to every penny of it. (The Court's decision in *Hillman v. Maretta*.)



6 Legal Documents To Update



The Big Six

Many people are surprised to learn that their most important legal and financial documents are not automatically made null and void after divorce.

Instead, key provisions in your will, trust, powers of attorney, retirement accounts, life insurance policies, etc., must be updated to ensure your ex-spouse is no longer named as a beneficiary or in a position of authority over your personal affairs.

You may also need to select a new executor, power of attorney and health care surrogate whom you trust to oversee your finances and uphold your wishes if the unthinkable happens. Once you remove your ex from these roles, it's critical to fill the void.

To ensure your legal documents are up to date and created with your future protection and financial security in mind, talk to your trusted advisor about amending the following:

1 Wills and Trusts: It's a good idea to start fresh with a will or trust after divorce. Some states will automatically void a will after a divorce is final (leaving you with nothing in place), while others will continue to honor a will that leaves everything to your ex (not good!) And, what if something happens to you *during* the proceedings? Your ex may still stand to inherit *all* of your estate. Avoid this by creating fresh documents that name a new executor, trustee and beneficiaries as soon as legally possible.

2 Power Of Attorney: This document determines who can act on your behalf and manage your finances should you become unable to do it yourself. Most people would shudder at the idea of their ex having the ability to pay bills, access accounts and sell assets on their behalf. The power of attorney gives the named party significant financial authority, so if your ex is still named on the document, it's a good idea to revoke it as soon as possible.

6 Legal Documents To Update



- 3 Health Care Directives-** Your healthcare directives (also referred to as a living will) name the party who can make medical decisions on your behalf in an emergency. If you do not amend this document, your ex-spouse may bear the responsibility of making life or death decisions for you and managing your future healthcare needs. In the event of a serious health care crisis or future disability, it's critical to have someone you trust and with whom you feel comfortable named on this document.
- 4 Beneficiary Designations-** Most insurance policies, bank accounts, retirement accounts and investment accounts include the designation of a beneficiary. This is the person who will receive some or all of the money from that policy or account upon your death. If you do not manually update each and every beneficiary designation where your ex-spouse is named, he or she may still legally inherit your money after your passing. Overlooked beneficiary designations cause major devastation to families every single day, so don't wait to update your accounts.
- 5 Deeds and Titles-** If your divorce decree requires the transfer of titles to property (automobiles, boats, etc.), sign and deliver the necessary documents to complete the transfer.
- 6 Guardians for Minor Kids-** After a divorce, it's important to revisit your guardian nominations for minor kids to let the court know whom you now want to raise them, should you pass away. While your ex-spouse would most likely get custody in your absence, this information will be helpful should your ex-predecease you or be found unwilling/unfit to serve.

6 Legal Documents To Update



Timing Is Everything

Most states have strict rules about exactly *when* in the divorce process your estate planning documents can be altered or updated.

For those considering a divorce, certain provisions in your estate planning documents may require that your soon-to-be ex be notified of the changes you are seeking to make. Your lawyer can help guide you as to which changes can be made privately and which require your spouse's consent. Regardless, prior to filing for divorce is generally the best time to update your documents for maximum protection heading into the proceedings.

During a divorce, many jurisdictions provide for an Automatic Temporary Restraining Order ("ARTO"), which does not permit the revocation of a trust, the changing of life insurance beneficiaries, retirement plan beneficiaries, pension plans, employee benefit plans and other "non-probate" transfers. The purpose of the ARTO is to maintain the status quo of asset ownership until the division of assets is complete. A good estate planning lawyer will help you work within the framework of these laws to change as many documents as legally possible and protect your interests during the remainder of the proceedings.

Once a divorce is finalized, all of your legal documents are fair game. This is the perfect time to revoke old documents, create new ones and choose new authority figures whom you trust to oversee your affairs in the event of your death or incapacity.

Can an Estranged Spouse Really Inherit Your Estate? Michigan Law Says YES!

In *re Estate of Hayes*, Mich App Docket# 315586 (2014), a husband and wife signed a property division / settlement agreement during divorce proceedings. Before the divorce judge signed off on it, the husband died. No estate planning documents were updated. The surviving spouse was able to receive the entire estate, which was much more than she would have received under the settlement

6 Legal Documents To Update



Take Back Control: Start The Process Of Estate Planning Today For Future Peace of Mind

No matter which stage of the divorce process you find yourself in today, if you would like to be absolutely certain that your ex (or soon -to-be-ex!) will not have control over finances or your medical decisions, we invite you to call the lawyers at Eyestone Law Offices to schedule a free Infinite LegacySM Planning Session (\$885 value).



During this comprehensive session, our attorneys will help you identify any areas in which you may be vulnerable during or after divorce and help you create a solid roadmap for your financial protection and peace of mind.

Whether it's amending beneficiary designations, creating new wills and trusts, protecting assets from an ex-spouse or even beginning the process of protecting the proceeds of a divorce settlement in the event of a future re-marriage, we can help you get your affairs in order, *quickly*, to ensure long-term protection and total control. Simply call our Muskegon law firm at 800-667-5291 to get started.

We hope that you found the information in this guide useful and we are looking forward to helping you start this next phase of your life on a solid legal and financial foundation. Don't wait to schedule your Infinite LegacySM; **again, this in-depth meeting is free**, educational and one of the most empowering steps you will take as you head into the future. We look forward to helping along in your journey.

6 Legal Documents To Update



About the Author

Shawn Eyestone earned his law degree from Wayne State University Law School after first graduating with a bachelor's degree from the Lee Honors College of Western Michigan University. Following law school, he worked as an attorney in the estate planning, and business law practice groups of West Michigan and Detroit-area law firms, gaining valuable experience and a very loyal client-following.

He remains actively involved with WealthCounsel, a nationwide consortium of over 2,300 of the top estate planning and business attorneys in the country. Eyestone is also a member of the National Association of Estate Planners and Councils, the Western Michigan Estate Planning Council, and the State Bar of Michigan, where he was selected to serve on the statewide Membership Services Committee. He is the vice president of the Grand Rapids Lions Club, a Deacon at Knapp Street Reformed Church, a coach with Grandville AYSO, and a past president and former director of the Specialized Language Development Center.



His philosophy revolves around the value of his clients. His clients and their families, legacies and time are extremely valuable.

Eyestone has been awarded the highest ratings offered by AVVO and Martindale-Hubbell, two of the most respected organizations that rate attorneys.

Eyestone Law Offices

Grand Rapids Area Office
3083 Washington Ave, Suite A.
Grandville, MI 49418

Muskegon Area Office
800 East Ellis Road
Muskegon, MI 49441

Grand Rapids Area Office
625 Kenmore Ave SE, Suite 301
Grand Rapids, MI 49546

800-667-5291
www.eyestonelawoffices.com