

Marietta Divorce and Wills and Estates Lawyer Discusses How Georgia Divorce Affects Your Will and Trust

As a Marietta divorce lawyer, I know that getting a divorce in Georgia can be an overwhelming process. There are so many decisions to make and things to do that it's hard to keep everything straight. And as a Marietta estate planning lawyer, I also know there is one thing that divorcing couples *must* remember to do—and that is getting your will or trust updated.

Forgetting about your estate plan is understandable from any perspective. You're so busy thinking about living arraignments, finances and custody agreements that you simply forget to contact an estate planning lawyer to make sure your spouse will no longer be the beneficiary of your estate once the divorce is final.

And while I admit estate planning is easy to overlook, it's still something that must be taken care of either before you file or immediately after your divorce is complete.

This is especially true if you have a life insurance policy, retirement accounts, investments, property or even a joint trust with your current spouse. If you fail to take steps to create a single person trust or designate new beneficiaries on your other assets, your ex-spouse will still receive everything you own—even after you are legally divorced.

Similarly, if you don't create an updated power of attorney and living will, your soon-to-be ex-spouse will be the only one with legal permission to make decisions for you if you are permanently or temporarily incapacitated. For most people, the thought of their soon-to-be ex making decisions such as medication administration, life-support or nursing home vs. home health care is frightening. Also, the ex most likely does not want that responsibility any longer. That is why it is critical to get these issues addressed at some point before or after the divorce proceedings.

However, there are strict time-frames as to when you can update/amend your estate planning documents during a divorce in Georgia, so please make yourself familiar with the following guidelines:

Updating Your Estate Plan Before Filing Divorce in Georgia

As a Marietta estate planning lawyer, I highly recommend you consider revoking and restating all of your estate planning documents *before* filing for divorce. This includes updating your advanced healthcare directive (also known as a living will) and financial power of attorney so someone other than your spouse has the ability to make financial or medical decisions on your behalf if you are unable. This is especially true if you're gearing up for a messy divorce which could likely drag on for a number of years.

You'll also want to change the beneficiaries on your life insurance policy, retirement accounts and other investments. If you have a joint trust with your spouse, you'll need to talk with your Marietta will and trust lawyer to find out whether you must provide notice to your spouse before it is revoked.

Updating Your Estate Plan During Divorce Proceedings in Georgia

During your divorce proceedings, the ability to revoke your trust or name new beneficiaries on certain accounts can be halted. What's known as an Automatic Temporary Restraining Order (ATRO) or a Standing Order will kick in to ensure your assets and ownership interests stay the same until an official division of assets and ownership interests takes place. Therefore, it's important to note that if you pass away during this time, your soon-to-be ex-spouse will still become the beneficiary of your estate. You can, however, update your will, power of attorney and living will during this time to minimize the amount of power your ex-spouse would have if something unexpectedly happens to you.

Updating Your Estate Plan After a Divorce in Georgia

After the divorce proceeding, you are considered a single person in the eyes of the law. You are free to update, revoke and amend your estate planning documents as you see fit. However, as a Marietta GA will and trust lawyer, I've come to find that many people falsely believe their spouse is no longer entitled to their assets once the divorce is officially granted. While it's true that some estate planning powers may be automatically revoked after the divorce (such as the ability to speak for you medically if you were in an accident), if you have outdated legal documents in place that still include your ex-spouse, he or she will still be the legal beneficiary of your estate or specific assets upon your death. Therefore, it's important to make sure every legal document you have is updated immediately following your divorce.

When to Get Help

I always advise people in Georgia to at least meet with a Marietta estate planning attorney, in addition to their Marietta divorce attorney before ultimately filing for divorce. That's because it's important for you to know exactly how the divorce proceedings will affect you and/or your children, especially if you become incapacitated or pass away suddenly during the process.

With so much going on during divorce it is difficult to think about adding another legal process. However, it is critical to make sure your estate plan reflects your new circumstances to avoid everything you own going to your future ex-spouse if you pass away or avoid having him or her legally responsible to make medical or financial decisions for you in the event of incapacity.