

Safeguarding Your Future:

Essential Estate Planning Steps During and After Divorce

Divorce and estate planning are deeply interconnected areas of law that significantly impact your financial future and personal wishes. Engaging both a divorce attorney and an estate planning attorney ensures that your assets are protected, and your intentions are honored during and after the dissolution of a marriage.

In a candid conversation, we sit down with two experienced Long Island attorneys—Bennett Shelsky, a seasoned divorce attorney, and Thomas Manzi, a respected estate attorney—to discuss the often-overlooked intersection between divorce and estate planning.

While divorce law and estate law may seem distinct, they are deeply intertwined when it comes to dividing assets, protecting them, and ensuring that financial and legal affairs align with a client's evolving life circumstances and their estate intentions. Read on to better understand where and when you need to engage these two types of legal professionals.

Here are a few sample cases to illustrate how making assumptions or failing to pay attention to details can create problems for you post-divorce.

Estate Planning Pitfalls After Divorce Case in Point:

Sample Case #1: The Unintended Beneficiary

Bennett: "I had a client, "Michael", who finalized his divorce but never updated his life insurance policy. When he passed unexpectedly, his ex-wife was still the named beneficiary. His children were shocked and devastated to learn that she, rather than them, would receive the full payout. He had verbally assured them that they were taken care of, but legally, his paperwork told a different story.

Thomas: "This is exactly why I stress to clients the importance of reviewing all financial accounts and legal documents after a major life event like divorce. Wills and trusts alone don't always override beneficiary designations on things like life insurance and



"Many clients come to me focused solely on the division of marital assets, child custody, child support and spousal support. What they often fail to consider is how their estate plan, including non-probate assets, needs to change post-divorce. I've seen too many cases where people forget to update their beneficiaries, only to have ex-spouses inherit assets they never intended to leave them."

- Bennett R. Shelsky, Divorce Attorney



retirement accounts, and neither does a divorce settlement unless your documentation specifies your intention.”

If not before, post-divorce, updating your will, trusts, powers of attorney, health care proxy and retirement account beneficiaries is crucial. Otherwise, your wishes and your assets could end up in the hands of someone you no longer wish to benefit.

Case In Point:

Sample Case #1:

The Home That Wasn't Protected

Thomas: “Another client, let’s call her Susan, who assumed that because her divorce agreement stated she would retain the family home, she was secure. However, a new deed was never executed and when her ex-husband passed away suddenly, his portion of the home became part of his estate. His new wife from a subsequent marriage ended up with a claim on the house, forcing Susan into a costly legal battle to stay in the home she had lived in for years.

This is a prime example of why having a thorough estate plan in conjunction with a divorce settlement is critical. If Susan had worked with her divorce attorney in conjunction with an estate attorney, she could have identified that the deed was an important document to address, which would have ensured that the necessary paperwork was completed to protect her interest in the home.”



“Estate planning should be an ongoing process, not a one-time event. In fact, as soon as you are convinced you are seeking a divorce, it may already be time to update your Power of Attorney and Health Care Proxy.

You don’t want to be in the middle of a heated divorce and have a medical emergency whereby your soon to be ex-spouse is put in the position of making life changing decisions on your behalf.”

- Thomas Manzi (Estate Attorney)

Understanding the Individual Specialties

1. Divorce Law and Real Estate

A divorce attorney plays a crucial role in navigating the legal complexities of ending a marriage. They assist with equitable distribution of marital property, child custody arrangements, child support and spousal support. It's a common misconception that once a divorce is finalized, all financial ties are severed. However, without proper legal guidance, you might overlook critical aspects such as jointly owned properties or shared debts, which can lead to future disputes.

2. Estate and Elder Law

An estate attorney focuses on preparing for the distribution of your assets and the management of your affairs in the event of incapacity or death. This includes drafting wills, establishing trusts, designating powers of attorney, and setting up healthcare proxies. Major life events, like divorce, necessitate a

thorough review and possible revision of these documents to ensure they reflect your current wishes and circumstances.

Overlapping Areas During and After Divorce

1. **Pre-Divorce Considerations:** Before finalizing a divorce, it's essential to address estate planning issues:
 - **Jointly Owned Assets:** Determine how properties and accounts held in both names will be managed or divided.
 - **Powers of Attorney and Healthcare Proxies:** Consider revising these documents to appoint individuals other than your soon-to-be ex-spouse, especially if the relationship is contentious.
2. **Post-Divorce Revisions:** After the divorce is finalized:
 - **Update Wills and Trusts:** Ensure your will and any trusts accurately reflect your new circumstances and intentions.
 - **Beneficiary Designations:** Review and update beneficiaries on life insurance policies, retirement accounts, and other financial instruments to prevent unintended inheritances.
 - **Guardianship Provisions:** If you have minor children, designate guardians, and establish provisions for their care that align with your current wishes.
 - **Retirement Accounts:** Confirm that spousal rights to retirement assets are addressed and beneficiary designations are updated accordingly.
3. **Special Cases**
 - **Blended Families & Second Marriages:** Carefully structure your estate plan to balance the interests of your new spouse and children from previous relationships.
 - **Real Estate Holdings:** Address ownership and title changes for properties co-owned with an ex-spouse to prevent future legal complications.
 - **Elder Care Planning:** If you have dependents or aging parents, ensure your estate plan includes provisions for their long-term care and financial support.

Automatic Orders in New York Divorces

In New York, initiating a divorce action triggers **Automatic Orders** designed to maintain the financial status quo between parties. These orders prevent either spouse from making significant unilateral changes to their financial situation during the divorce process. Key restrictions include:

- **Property Transactions:** Prohibits selling, transferring, or disposing of any real or personal property without written consent from the other party or a court order, except for transactions conducted in the usual course of business or for customary household expenses.

- **Retirement Accounts:** Restricts withdrawing, transferring, or borrowing against retirement accounts without consent or a court order, unless already receiving payments.

- **Debt Accumulation:** Prevents incurring unreasonable debts, such as significant new loans or excessive credit card use, except for customary household expenses or reasonable attorney's fees.

- **Insurance Policies:** Mandates maintaining existing insurance policies and prohibits changing beneficiaries, or coverage amounts to ensure continued coverage during proceedings.

Violating these orders can lead to legal consequences, including potential contempt of court charges. It's essential to consult with your attorney to fully understand these restrictions and ensure compliance throughout the divorce process.

6-12 Months Post-Divorce make sure you have followed up with your estate attorney regarding:

- Conducting a comprehensive review of your financial and estate plans to ensure all documents accurately reflect your current wishes and financial situation.
- Implementing long-term tax and estate planning strategies to optimize asset protection and distribution.

By meticulously organizing these documents and adhering to this timeline, you can navigate the complexities of divorce and estate planning more effectively, ensuring that your legal and financial interests are safeguarded throughout the process.

Practical Steps for Clients

1. Consultation Timing

Engage both a divorce attorney and an estate planning attorney early in the process. Coordinated efforts between these professionals can help you navigate legal complexities and protect your interests effectively.

2. Essential Documentation

To make your consultations productive, prepare the following documents:

- **Personal Identification:** Driver's licenses, Social Security numbers, and birth certificates for all family members.
- **Financial Records:** Recent tax returns, pay stubs, bank statements, investment account statements, and retirement account information.
- **Property Documentation:** Deeds, mortgage statements, property tax assessments, and titles for all real estate holdings and vehicles.
- **Debt Information:** Statements for mortgages, loans, credit cards, and any other outstanding debts.
- **Existing Legal Agreements:** Prenuptial or postnuptial agreements, previous divorce decrees, and any court orders related to child custody or support.
- **Estate Planning Documents:** Current wills, trusts, powers of attorney, healthcare proxies, and life insurance policies.

The Down Low on the EPTL

In New York, the Estates, Powers, and Trusts Law (EPTL) governs estate planning and outlines the legal framework for the distribution of assets upon an individual's death. A critical provision within this law, EPTL § 5-1.4, specifically addresses the impact of divorce on estate planning documents and designations.

Revocation of Beneficiary Designations and Appointments: Under EPTL § 5-1.4, a divorce or annulment automatically revokes any revocable dispositions or appointments of property made by a divorced individual to their former spouse. This includes provisions in wills, beneficiary designations on life insurance policies, retirement accounts, and revocable trusts.

Additionally, any revocable nominations of the former spouse to serve in fiduciary or representative capacities—such as executor, trustee, guardian, agent, or attorney-in-fact—are also revoked. The law treats the former spouse as having predeceased the individual, thereby nullifying their rights to these roles or assets.

Severance of Joint Tenancies

The statute further stipulates that a divorce severs joint tenancies between former spouses, including joint bank accounts, converting them into tenancies in common. This change means that each party owns an equal share of the property without the right of survivorship, which would have allowed the surviving ex-spouse to inherit the other's share automatically. (source: nassaubar.org)

Exceptions and Considerations

It's important to note that EPTL § 5-1.4 applies only to revocable dispositions. Irrevocable trusts and irrevocable beneficiary designations are not affected by this provision. Moreover, the automatic revocation provisions take effect only upon the finalization of the divorce. If an individual passes away before the divorce is legally complete, the spouse may still benefit from the existing estate plan.

3. Timing of Estate Plan Updates

It's advisable to begin updating your estate plan as soon as divorce proceedings commence. Certain changes may be restricted until the divorce is finalized, but early planning ensures that your wishes are implemented promptly once legally permissible.

Common Questions Addressed

• How does divorce affect my existing will?

In many jurisdictions, provisions in your will that favor an ex-spouse are automatically revoked upon divorce. However, it's crucial to formally update your will to reflect your current intentions and to prevent potential legal challenges.

• Can I change beneficiary designations during divorce proceedings?

Changing beneficiary designations during divorce can be complex and may be subject to legal restrictions. It's essential to consult with your attorney to understand what modifications are permissible during this period.

• What happens if I become incapacitated during the divorce process?

If you haven't updated your powers of attorney or healthcare proxies, your soon-to-be ex-spouse may retain decision-making authority. Revising these documents promptly can ensure that a trusted individual of your choosing is empowered to act on your behalf.

Final Thoughts

Divorce significantly impacts your financial and legal future. Proactively addressing these issues with both a divorce attorney and an estate planning attorney will help you secure your assets, protect your interests, and ensure your legacy is handled according to your wishes.

Remember, that without proper estate planning, even the most well-negotiated divorce settlement can be undermined by outdated legal documents.

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Practical Implications

While EPTL § 5-1.4 provides automatic revocation of certain provisions favoring a former spouse, it is prudent to proactively update estate planning documents during and after divorce proceedings. Financial institutions and other entities may not be immediately aware of the divorce, potentially leading to unintended distributions.

Therefore, individuals should:

- Review and revise wills, trusts, and beneficiary designations to reflect current intentions.
- Update fiduciary appointments, such as executors and agents under powers of attorney.
- Notify relevant financial institutions and insurance companies of the divorce to ensure records are updated accordingly.

By taking these steps, individuals can ensure that their estate plans accurately represent their wishes and prevent unintended benefits to former spouses.

are here to guide you every step of the way. Serving Suffolk, Nassau and the Five Boroughs, we are local with a passion for building relationships that improve case outcomes as well as the lives for our valued clients.

Bennett R. Shelsky, Bennett R. Shelsky Law Firm, PLLC

Bennett R. Shelsky Law Firm, PLLC takes immense pride in being your trusted legal advocate. With a distinguished legal career spanning over 25 years, Bennett R Shelsky is a seasoned attorney who has been practicing since 1995. He holds licenses in New York and Arizona, making him well-versed in the intricacies of multiple jurisdictions.

Bennett's unwavering commitment is to safeguard his client's best interests. As your trusted legal advocate, he will go above and beyond to meet your needs and goals. He is committed to looking out for your best interests in a pragmatic, realistic way, ensuring that you receive the dedicated representation you deserve.

The best advice we can give is to work with **both** a divorce attorney and an estate planner to ensure a seamless transition. The cost of planning now is far less than the financial and emotional toll of mistakes discovered too late. Protect your assets, your children's inheritance, and your peace of mind by ensuring your legal documents reflect your current wishes. Connect with an experienced attorney to review and update your plan today.

Not sure where you stand in your separation, divorce, or post-divorce life? Book an initial, complimentary consultation to get your paperwork on track and your future secured.

Ready to talk to the experts? Call today.

Thomas Manzi, Thomas J. Manzi Law, PC

At Thomas J. Manzi Law, PC, we provide expert legal counsel focused in the areas of Law, Estate Planning & Administration, Guardianship, Veterans Rights, Real Estate and Disability Rights.

Whether you need help managing your parents' estate or setting up a guardianship to care for a loved one, our team of dedicated attorneys



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