

The Post-Divorce Guide to Estate Planning in Idaho

After a divorce, is it important to update your estate planning documents to make sure they reflect your new life. In Idaho, if you made a will or trust prior to getting divorced, any gift made to your spouse or your spouse's family is automatically revoked by the divorce. However, it is still critical to review and update your estate plan to make sure it includes your current wishes and adequately protects you and your children. Here are a few important steps to take:

1. **Revoke your old will and make a new one.**

The first step is to revoke your old will – which can be done by literally tearing up the original and any copies or by stating in your new will that you are revoking all prior wills – and make a new one. If you don't already have a will, now is the time to make one. If you are like many people, you likely left everything in your will to your spouse. Your new will should reflect your new wishes, and include who you want to be the executor of your estate.

2. **State your guardianship preference.**

If you die and your ex-spouse is still alive, your ex-spouse will most likely be awarded custody of your children. Only if both parents are deceased, or if the surviving parent is determined to be unfit, will a court appoint a guardian. If you feel strongly that your ex-spouse should not have custody, you should put your reasons in writing and attach that statement to your will for a judge to consider.

3. **Revise your trust.**

If you have a revocable living trust, you likely have a joint trust with your ex-spouse. You should dissolve the joint trust and create a new one, naming new beneficiaries and trustees. If you have minor children, you can name them as the beneficiaries of your trust and nominate a responsible, trusted adult, other than your ex-spouse, to control and manage your children's assets if you die.

4. **Make sure you have a trust for minor children.**

If you don't have a trust for minor children and something happens to you, your ex-spouse will have control of the children's finances until they turn 18. Most people do not want their ex-spouse controlling their children's money. Setting up a revocable living trust allows you to

name someone of your choosing as trustee to access and control your children's money if you die.

5. Update your beneficiary designations.

Review your beneficiary designations on life insurance policies and retirement benefits awarded to you to remove your spouse and nominate another person. This is especially important because these assets pass directly to the named beneficiary after your death. Although Idaho state law bars your ex-spouse from inheriting after a divorce, the financial institution in control of your account does not know you got divorced and will disburse the funds to your named beneficiary. The last thing you want your heirs to have to do is try to collect funds improperly paid to your ex-spouse, especially if your divorce did not end on good terms.

6. Update your health care power of attorney.

Your health care power of attorney allows you to designate someone to make health care decisions for you if you are unable to do so yourself. Most people do not want their ex-spouse making these decisions. Execute a new health care power of attorney naming someone other than your spouse, and make sure your health care providers have updated copies.

7. Update your financial power of attorney.

A financial power of attorney gives your agent broad powers, such as to sell your property and remove funds from your financial accounts. If you have appointed your spouse as your agent on any financial power of attorney, you should immediately execute a document revoking the power of attorney, and deliver a copy to all of your financial institutions. This may be done even while your divorce case is still pending. You should also execute a new financial power of attorney naming another trusted person.

Estate planning can be intimidating, but it's an important part of starting your new life. At Shaila Buckley Law, we make the process simple and easy to understand. We take the time to listen your needs and wishes, explain your estate planning options in simple terms, and use our legal expertise to help you put together a comprehensive estate plan that works for you.

Give us a call at (208) 995-9224 to schedule your initial consultation today or visit our website to learn more ShailaBuckleyLaw.com.