

How Do I Protect My Assets from the Unexpected During the Divorce Process?

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Divorce usually isn't fun. Want to make it less fun? Add some thinking about death.

It sounds like the last thing anyone would want to do – but life is unpredictable, and things happen. Did you know the mere filing of a divorce proceeding has no effect on your existing estate planning documents like a last will and testament, power of attorney and advanced directive/health care proxy?

That's right! Until a divorce is finalized, your soon-to-be ex-spouse may stand to inherit your assets should the worst scenario happen, and if you become incapacitated, your spouse may have the power to make financial and medical decisions for you.

More than half of Americans don't have a last will and testament, and for married couples who have one, making changes to it probably isn't a priority during a divorce. But if you don't want your soon-to-be ex to inherit your assets if you pass away before your divorce is finalized, then creating or changing your will should be a priority.

Protect Your Assets

In New Jersey, if you die without a will, your spouse inherits most, if not all, of your assets, depending on your family makeup. That means if something happens to you before a divorce is finalized, your spouse could get your money and property. No divorce can be granted after death.

You can limit how much your spouse would inherit, or perhaps prevent him or her from inheriting anything at all, if you properly execute a last will and testament before receiving a judgment of divorce.

A [last will and testament](#) contains instructions for distributing your assets when you die. After you pass away, your assets become your “estate.” The document also names an executor, who is the person designated to carry out the instructions in your will.

Most married couples leave their assets to each other in what’s called a “sweetheart will.” If you don’t have a will at all, or if you have a “sweetheart will” that leaves your estate to your soon-to-be-ex, you should contact an experienced estate attorney to change and properly execute a new last will and testament right away. The attorney will make sure that the new will designates new beneficiaries of your estate and someone you trust as the new executor. The attorney can also help advise you regarding your ability to make any changes to beneficiaries of life insurance and certain retirement accounts as they are not typically controlled by your last will and testament.

While New Jersey law doesn’t allow a divorce after death, a person’s estate may be able to sue the surviving spouse for equitable distribution under certain circumstances. That way, the beneficiaries you named in your new last will and testament, such as children, may be able to inherit assets that would have been split up under equitable distribution in a finalized divorce.

Financial and Medical Decisions

Imagine a husband and wife going through a tough divorce. They can barely stand being in the same room together. Negotiations are not going well. Suddenly, the wife gets into a car accident. She is unconscious and unable to make any medical or financial decisions as her life hangs in the balance.

Under New Jersey law, until the divorce is finalized, the husband may still have the legal right to act on the wife’s behalf, especially if the husband is named in documents like a power of attorney or advanced directive/health care proxy. In the absence of those documents, he can seek a court’s permission to affirm that power. If a court grants it, the husband will have the power to make medical and financial decisions for the wife.

If that scenario makes your blood run cold, you need a power of attorney and advanced directive/health care proxy naming someone else to act on your behalf. If you already have those documents naming your spouse, you need to revoke and replace them immediately.

An estate attorney can prepare and properly execute a new power of attorney and advanced directive/health care proxy for you, letting you designate someone you trust to make financial and medical decisions on your behalf if you become incapacitated. The new documents will make it very difficult for your spouse to seek a guardianship or other permissions from the court to act on your behalf while you are incapacitated.

Communication and Beginning Anew

For some divorcing couples, a breakdown in communication is part of the rift. Negotiating and communicating during divorce isn't easy. But it's crucial to notify a soon-to-be ex-spouse if you make any changes to your estate planning documents, particularly when a spouse's authority to make financial and medical decisions is revoked.

While the divorce is still ongoing, a knowledgeable estate attorney can make changing your will, power of attorney and advanced directive/health care proxy a straightforward process. Then, once the divorce is finalized, you will be able to start anew knowing that your estate planning is already squared away.

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