

## **Estate Planning After Divorce - Tips from a Bay Area Probate Attorney**

Posted by Janet Brewer on Sun, Nov 28, 2010 @ 01:27 PM



Divorce is one of the most stressful events a person can experience. As the average person makes the adjustment from married to single life, one of the most important issues is often overlooked. That issue is estate planning.

### **When did you last update your estate plan?**

Although the court handles the division of assets in a divorce, modifying or [reworking an estate plan](#) is not within its purview. So, when a client tells me that he is divorced or that Jane is his second (or third) wife, my first question is, “When did you last update your estate plan?” Unfortunately, in most instances, the estate plan is outdated.

For whatever reason, people simply don’t appreciate how important it is to update their estate plan after a divorce. Oftentimes, updating the estate plan is a simple matter of executing a codicil to a will, amending a trust document, and [changing the beneficiaries](#) on life insurance policies, retirement accounts, and other financial accounts.

### **Depending on where you live, former spouse may not be automatically disqualified**

It’s important to note that twenty states have enacted legislation which automatically disqualifies a former spouse and the relatives of a former spouse from being beneficiaries on life insurance policies unless the divorce decree states otherwise. But thirty states have not. And even if your state does automatically disqualify your former spouse as a beneficiary, it may not disqualify him or her from being the [beneficiary on your retirement plan](#) (since many retirement plans are controlled by federal – *not* state – law).

So, it's extremely important to revisit your estate plan after a divorce to ensure that it is current and that your intentions will be carried out. If you live in a state that automatically disqualifies a former spouse or a former spouse's relatives from being a beneficiary on a life insurance policy and your life insurance policy designates a former spouse or a former spouse's relative as a beneficiary, you need only update the beneficiary designation after the divorce. This will reflect the new relationship between you and your former spouse and prove that you intended to leave the policy to your former spouse or his or her relative even though the two of you are no longer married.

### **Updating other key documents**

In addition to revisiting your will, trust, and life insurance policies after a divorce, it's also important to update your IRA and 401(k) [beneficiary designations](#), your [durable power of attorney](#) for property matters, and your health care or medical power of attorney. Failing to make changes to these documents may mean that your former spouse will receive your retirement benefits or be managing your finances and making important health care decisions in the event that you become terminally ill or are in a coma or persistent vegetative state. This can be especially trying if you have remarried or are not on good terms with your former spouse and would be uncomfortable having him or her in control of your money and/or medical care.

### **Getting started**

If you are recently divorced, the Law Office of Janet L. Brewer would be more than happy to review your estate plan with you and make the necessary changes to update it. Janet Brewer is certified as an estate planning and probate law specialist by the California State Bar Board of Legal Specialization. She serves [high-net worth clients](#) in the San Francisco Bay, Palo Alto, Santa Clara, and surrounding areas.

[Get started >>](#)

### **Learn more**



Request your copy of [Picking Your Trustee in California](#). In this free guide you'll find advice on how to choose a trustee and how to put your values at the center of your estate-planning process.