

# Stay In Control During And After Your **Divorce...**



And Make Sure That Your Assets  
Don't Accidentally End Up In the  
Hands Of Your Ex-Spouse!

**6** Legal Documents To **Update**

**Weissler Law Group**  
**(619) 281-1888**



# 6 Legal Documents To **Update**



When a divorce—also called a dissolution of marriage—is imminent, meeting with an estate planning attorney is not usually at the top of anyone’s “to do” list.

*But, it should be!*

Divorces can take a fairly long time, even months or *years* to complete. **It’s important to consider what would become of your assets, or even your physical self, should you become incapacitated or die before the divorce has been finalized.**

And, for those who have made it through the proceedings, **now is the time to update estate planning documents** such as wills and trusts to remove your ex from positions of authority and name new individuals whom you trust to act on your behalf.



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## What Is Estate Planning?

Estate planning offers legal protection for families and individuals through all of life's transitions. Using tools such as wills, trusts, powers of attorney and health care directives, estate planning helps individuals protect their wishes, safeguard their assets and ensure provision and care for loved ones following their death or incapacity.

## What Does Estate Planning Have To Do With My Divorce?

**If you do not update your legal documents before, during or after your divorce, you could experience one of the following nightmares:**

You become incapacitated during divorce proceedings and your soon-to-be ex still has authority over your medical and financial affairs.

You die during divorce proceedings and your home and bank accounts pass to your financially unstable estranged spouse with nothing left for your children.

You die during divorce proceedings and your would-have-been ex gets to make all of your funeral arrangements, choose what will happen to your remains, and chooses who, if anyone, will be told you have died.

You die many years after your divorce, without updating key beneficiary designations, which leaves your ex-spouse to inherit from your estate.

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## Won't A Divorce Automatically Prevent My Ex-Spouse From Inheriting My Estate?

Not necessarily. Although California has enacted some estate planning protections for those who are legally divorced, they are limited and may not help.

California's protections are only available when your divorce is final. Divorce, *not separation*, triggers these limited protections. During divorce, life insurance, investment and bank account beneficiary designations are unprotected until your divorce is final. If you become unable to make decisions while your divorce is pending, your ex may still be able to take over running your affairs and inherit from your estate.

Another concern arises so long as you and your spouse continue to be listed as the co-trustees or joint owners of property or financial accounts. If you become incapacitated, your spouse may have unchecked access to those assets, allowing them to buy or sell property, take out loans, or spend down these accounts, while you are confined to a hospital bed.

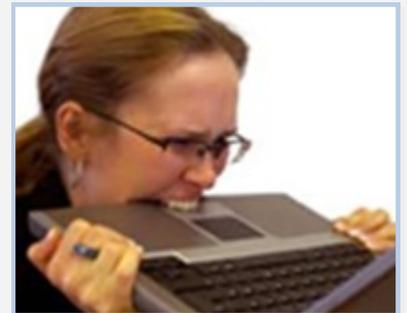
If you fail to transfer assets or make a new plan after your divorce, California's protections will not apply *if* your ex can show by clear and convincing evidence that you intended to leave them as a beneficiary. The longer you wait after your divorce, the more that delay can be used as evidence that you still intended to provide for your former spouse.

In order to protect your interests during or after a divorce, it makes good sense to talk with an estate planning attorney. A qualified attorney can offer advice on where you may be vulnerable. You may need to act *quickly* in order to revoke key legal documents, notify your financial institutions and designate who should inherit from you.

### Supreme Court Favors Ex-Wife Over Widow In Battle For Life Insurance Proceeds

When Warren Hillman died in 2008 at the age of 66, his assets included a life insurance policy worth \$124,558.03.

For the past five years his ex-wife and his widow have been fighting over that money. Today the U.S. Supreme Court found that Judy Maretta, who Hillman divorced 10 years before he died, was entitled to every penny of it. (The Court's decision in *Hillman v. Maretta*.)



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## The Big Six

Many people are surprised to learn that their most important legal and financial documents are not automatically made null and void after divorce.

Instead, key provisions in your will, trust, powers of attorney, retirement accounts, life insurance policies, etc., should be updated to ensure that your ex-spouse is no longer named as a beneficiary or in a position of authority over your personal affairs.

You may also need to select a new executor, power of attorney and health care surrogate whom you trust to oversee your finances and uphold your wishes if the unthinkable happens. Once you remove your ex from these roles, it's critical to fill the void.

To ensure your legal documents are up to date and created with your future protection and financial security in mind, talk with your trusted advisor about amending the following:

**1 Wills and Trusts:** It's a good idea to start fresh with a new will or trust after divorce. Some states will automatically void a will after a divorce is final (leaving you with nothing in place), while others will continue to honor a will that leaves everything to your ex (not good!) And, what if something happens to you *during* the proceedings? Your ex may still stand to inherit *all* of your estate. Avoid this by creating fresh documents that name a new executor, trustee and beneficiaries as soon as legally possible.

**2 Power of Attorney:** This document determines who can act on your behalf and manage your finances should you become unable to do it yourself. Most people would shudder at the idea of their ex having the ability to pay bills, access accounts and sell assets on their behalf. A power of attorney gives the named party significant financial authority, so if your ex is still named on the document, it's a good idea to revoke it as soon as possible.

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**3 Health Care Directives-** Your advance directive (also referred to as a healthcare power of attorney) empowers your chosen representative to make medical decisions on your behalf if you are not able to communicate, or give informed consent. If you do not amend this document, your ex-spouse may bear the responsibility of making life or death decisions for you and managing your future healthcare needs. In the event of a serious health care crisis or future disability, it's critical to have someone you trust and with whom you feel comfortable named on this document.

**4 Beneficiary Designations-** Most insurance policies, bank accounts, retirement accounts and investment accounts include the designation of a beneficiary. This is the person who will receive some or all of the money from that policy or account upon your death. If you do not manually update each and every beneficiary designation where your ex-spouse is named, he or she may still legally inherit your money after your passing. Overlooked beneficiary designations cause major devastation to families every single day, so don't wait to update your accounts.

**5 Deeds and Titles-** If your divorce decree requires the transfer of titles to property (automobiles, boats, etc.), sign and deliver the necessary documents to complete the transfer.

**6 Guardians for Minors-** After a divorce, it's important to revisit your guardian nominations for your minor children to let the court know whom you now want to raise them, should you pass away. While your ex-spouse would most likely get custody in your absence, this information will be helpful should your ex predecease you or be found unwilling/unfit to serve.

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## Timing Is Everything

Most states have strict rules about exactly *when* in the divorce process your estate planning documents can be altered or updated.

**For those considering a divorce**, certain provisions in your estate planning documents may require that your soon-to-be ex be notified of the changes you are seeking to make. Your lawyer can help guide you as to which changes can be made privately and which require your spouse's consent. Regardless, **PRIOR TO FILING FOR DIVORCE** is generally the best time to update your documents for maximum protection heading into the proceedings.

**During a divorce**, many jurisdictions provide for an Automatic Temporary Restraining Order ("ARTO"), which does not permit the revocation of a trust, the changing of life insurance beneficiaries, retirement plan beneficiaries, pension plans, employee benefit plans and other "non-probate" transfers. The purpose of the ARTO is to maintain the status quo of asset ownership until the division of assets is complete. A good estate planning lawyer will help you work within the framework of these laws to change as many documents as legally possible, and protect your interests during the remainder of the proceedings.

**Once a divorce is finalized**, all of your legal documents are fair game. This is the perfect time to revoke old documents, create new ones and choose new authority figures whom you trust to oversee your affairs in the event of your death or incapacity.

**Health Care Directives-** Your healthcare directives (also referred to as a living will) name the party who can make medical decisions on your behalf in an emergency. If you do not amend this document, your ex-spouse may bear the responsibility of making life or death decisions for you and managing your future healthcare needs. In the event of a serious health care crisis or future disability, it's critical to have someone you trust and with whom you feel comfortable named in this document.

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## Take Back Control: Start The Process Of Estate Planning Today For Future Peace of Mind

No matter which stage of the divorce process you find yourself in today, if you would like to be absolutely certain that your ex (or soon-to-be-ex!) will not have control over your finances or your medical decisions, we invite you to call the lawyers at the **Weissler Law Group** at (619) 281-1888 to schedule a free **ESTATE RE-ALIGNMENT PLANNING SESSION** (a \$525 value).



During this comprehensive session, our attorneys will help you identify any areas in which you may be vulnerable during or after divorce, and help you create a solid roadmap for your financial protection and peace of mind.

Whether it's amending beneficiary designations, creating new wills and trusts, protecting assets from an ex-spouse or even beginning the process of protecting the proceeds of a divorce settlement in the event of a future marriage, we can help you get your affairs in order, *smoothly and painlessly*, to ensure long-term protection and total control.

**Call our San Diego based law firm at either (619) 281-1888 or (760) 487-8180 to get started.**

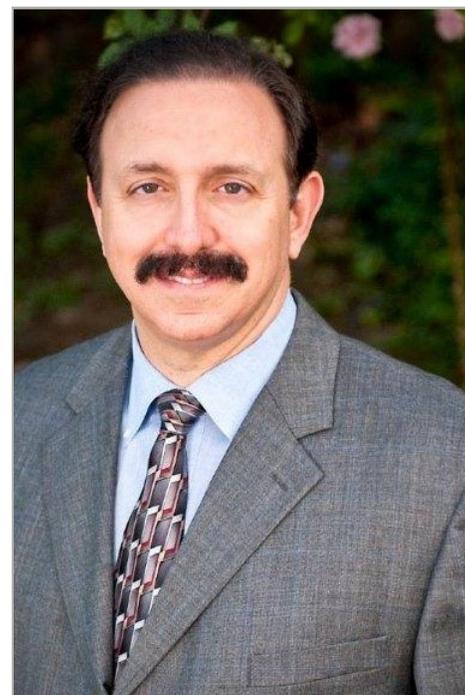
We hope that you found the information in this guide useful and we are looking forward to helping you start this next phase of your life on a solid legal and financial foundation. Don't wait to schedule your **ESTATE RE-ALIGNMENT PLANNING SESSION**; again, **this in-depth meeting is free**, educational and one of the most empowering steps you will take as you head into the future. We look forward to helping you along in your journey.

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## About the Author

Attorney **Joel Weissler** has practiced law in San Diego for over 25 years. He is an active member of the National Association of Elder Law Attorneys (NAELA) and currently serves as an Officer for the Southern California Chapter. In addition, he is a longtime member of WealthCounsel, and a charter member of ElderCounsel. He has been recognized in San Diego Magazine and received their five star award for the past five years and was, through peer nomination, recognized in 2010 as a "Top Attorney" in the Estate Planning Category by the San Diego Daily Transcript. He has been recognized for the past four years by Martindale-Hubbe and its affiliated website Lawyers.com with their "Client Distinction" award as being in the top 1% of attorneys in client service and satisfaction. In addition, Attorney Weissler has received a Superb (10.0) rating by Avvo. He is a California Board of Legal Specialization Certified Tax Specialist.



Attorney Weissler recently appeared as an expert for KUSI TV News. He has served as a co-author of the University of California CEB Press's highly regarded book on business succession planning dealing with estate and tax planning issues.

Attorney Weissler is the author of the book ***"The California Guide to Growing Old Without Going Broke"*** to be released this coming winter in paperback and in Amazon's Kindle E-book format.

Joel's goal in founding the Weissler Law Group was, and remains, to touch clients' lives by providing the highest level of legal representation in areas which make a difference for his clients and their families.

### THE WEISSLER LAW GROUP

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