

Pre-Divorce Estate Update Checklist

Thanks for downloading our Lawvex Pre-Divorce Estate Update Checklist. At Lawvex, we believe in Education for our clients and other attorneys. We created this Checklist to share knowledge and understanding for California family law and divorce attorneys and parties to pending divorces to learn about what and how you can and should update your estate plan during divorce.

If you are a party to a divorce and want to update your estate plan, or if you are a family law/divorce attorney and would like to refer a client, click Book a Strategy Session below and our Intake Specialist will connect you with one of our Estate Planning Attorneys.



lawvex.com/pre-divorce
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1. WARNING: Unless you did a prenuptial agreement prior to marriage or postnuptial agreement after marriage - YOUR SPOUSE HAS CERTAIN LEGAL RIGHTS REGARDING THEIR DECISION MAKING AND ASSETS UNTIL THE DIVORCE IS FINAL.



2. To ensure that your soon-to-be-ex does not make medical and financial decisions for you if you are in an accident or have some kind of a health event and are incapacitated, you MUST CREATE A NEW Advance Health Care Directive and Financial Power of Attorney - immediately.



3. If you have minor children with your soon-to-be-ex, and something happens to you, your ex will still have parental rights, however, you can and should document WHO YOU NOMINATE AS A GUARDIAN OF THE PERSON AND ESTATE OF YOUR MINOR CHILDREN.



4. To ensure that your soon-to-be-ex does not make financial decisions for you or inherit from you if you die before the divorce is final, you MUST CREATE A NEW Will and Trust - immediately.



5. Name someone other than your ex as your nominated Executor and Trustee of your Will and Trust, and someone other than your ex as beneficiary.



6. If you have an existing estate plan: Do not use the same estate planning attorney that you used with your spouse to create the prior estate plan.



7. Make sure the estate planning attorney that you use thoroughly understands and is experienced with how to do pre-divorce estate updates and has a dedicated program for it (hint: ask what their plan is to notify your soon-to-be-ex and if they look at you with a blank stare or make up something on the spot - RUN!).



8. When you use an experienced estate attorney that knows how to do pre-divorce updates, make sure that written notice of the revocation of the prior joint trust is both sent to the soon-to-be-ex and filed with the divorce court.

You should end up with the following documents as deliverables:



1. New Advance Health Care Directive - naming someone other than ex to make medical decisions for you in the event of incapacity.



2. New Financial Power of Attorney - naming someone other than ex to make financial decisions for you in the event of incapacity.



3. New Will - naming someone other than ex to step in as Executor and wrap up the divorce proceeding if you die before it is complete and transfer assets to the new trust.



4. New Trust - naming someone other than ex to receive the assets from the Executor once the divorce is complete and distributes to someone other than ex.



5. Notice and Proof of Service - to the soon-to-be-ex and their attorney, notifying them of the New Estate Plan and that the prior estate plan (if there is one) is revoked.



6. File the Notice and Proof of Service - in the divorce case so there is a court record that the prior estate plan is revoked.