



PRE-DIVORCE PLANNING IN ILLINOIS

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# Estate Planning – The Forgotten Necessity

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# Contents

**Introduction (Sample Excerpt) . . . . . 1**

**So how do you avoid this terrible result? . . . . . 2**

**Revocable Trusts and Divorce . . . . . 3**

**DISCLAIMER . . . . . 5**

# Introduction (Sample Excerpt)

An important, but usually overlooked, aspect of pre-divorce planning is modifying (or perhaps creating) your estate planning documents to correspond with your current situation. The failure to do so during your pre-divorce planning can have disastrous results.

## Picture this . . .



You are in the middle of a nasty, hard-fought divorce. You are on your way home from the store, singing along with a song on the radio. Out of the blue, some bozo runs a red light and smashes into you, sending your car flying across the intersection, into a light pole.

You end up in the hospital, unconscious, perhaps in a coma. There are many medical issues concerning your care that need to be quickly addressed and resolved. But . . . you're unconscious and can't speak with the doctors. So what happens?

If you haven't updated your estate planning documents, most likely your spouse will be in charge of directing your medical care. That person who you're trying desperately to get rid of will be making decisions about whether you live or die. Really.

If you have a Power of Attorney for Health Care, it probably appoints your spouse as agent to make medical decisions for you, including decisions about life-sustaining treatments. Even if the Power of Attorney is old, and even if you're in the middle of a divorce, it's still effective. If you don't have a Power of Attorney, your spouse probably has the priority to make decisions for you under the Illinois Health Care Surrogate Act.

# So how do you avoid this terrible result?



It's easy. As part of your **pre-divorce planning**, you should collect and review your existing estate planning documents. Then, you need to **get a new estate planning attorney**, and modify the documents as appropriate. You need to replace the current fiduciaries (your spouse and his/her relatives) with people who you trust and who will be part of your post-divorce life. In addition, you need to modify the beneficiaries under your Will, revocable trust, and payable-on-death accounts to make sure that your family is protected.

If you don't have any existing estate planning documents, it's still easy to protect yourself. Just find yourself an **independent estate planner**, and discuss why you need the documents, and what you want to accomplish. It's a great first step in taking control of the rest of your life.

**It is recommended that you consider these suggestions before you file for divorce.** Once you are before the divorce court, there may be limitations and restrictions on the changes you can make, especially with respect to your properties. As soon as you have made the decision to proceed with your divorce, discuss these suggestions with your estate planning attorney and your divorce attorney.



**WARNING.** You may be tempted to try to take some of the suggestions in this excerpt by yourself. Please be advised that estate planning is a complex legal field. It is strongly advised that you do not try to modify or create your estate planning documents as a "do-it-yourself" project. It is well worth your time and money to hire an experienced estate planning attorney.

A second piece of advice: Don't hire an estate planning attorney to do your divorce, and don't hire a divorce attorney to do your estate planning. You need them both.

# Revocable Trusts and Divorce



Estate planning and an on-going divorce intersect in two specific situations. First, if you become incapacitated due to illness or injury during your divorce; and second, if you die before your divorce is finalized.

Presumably, your goal is the same in both situations: you want to protect yourself and your family. You want protection from your spouse interjecting himself into your affairs and from taking control of your property.

In addition to the traditional estate planning uses, **a funded revocable trust is a great tool** for protecting your family, and for maintaining control over your future, as you move forward with your decision to get a divorce and start a new life.

## **A revocable trust is uniquely able to keep your spouse out of your affairs if tragedy occurs before your divorce is final**

### ***INCAPACITY***

If you become incapacitated, your revocable trust has a built-in mechanism for your selected successor to take over and manage your financial affairs. The transfer of control to your successor trustee is a time-honored transition, and generally, the use of a trust is more accepted than the use of a power of attorney for property.

### ***DEATH***

If you die in the middle of your divorce, the court will terminate your divorce proceedings. In that case, your spouse will be treated as your “surviving spouse” under the law, and will inherit from you the same as if the divorce was never filed.

If you die without estate planning, your surviving spouse will receive all or a significant portion of your assets.

If you die with a Will that was created before your divorce, your Will will probably give everything to your surviving spouse.

Even if you changed your Will and you left your spouse nothing, your spouse may still receive a large share of your property. Many people are only vaguely aware that there are certain “statutory benefits” attached to a marriage. Under the Illinois Probate Act, your surviving spouse will be entitled to a “Spouse’s Award,” to “renounce your Will,” and to receive a significant portion of your probate estate.

## **A funded revocable trust is the only way to limit what your spouse will receive if you die before the divorce is final**

If you create a revocable trust that protects your family and excludes your spouse, and if you “fund” the trust by transferring your assets into it, then you have a court-approved method to limit your spouse’s claim to your property.

**This is an excerpt from a book that provides a detailed discussion of estate planning as an important aspect of Pre-Divorce Planning in Illinois, and presents certain techniques to protect you and your family.**

**The complete book can be purchased at [LeanPub.com](http://LeanPub.com) .**

If you would like additional information about estate planning in Illinois, please check out my website and the following articles.

[ChicagoEstatePlanning.com](http://ChicagoEstatePlanning.com)

[Estate Planning 101, a Tutorial](#)

[Estate Planning - Step by Step](#)

[Essential Estate Planning Documents](#)

[Estate Planning - Get Started](#)

# **DISCLAIMER**

This excerpt is a general discussion of certain estate planning principles and techniques in Illinois and is provided solely for informational purposes. The content of this excerpt is not intended to provide legal advice or tax advice in any situation.

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