

# ESTATE PLANNING



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## Digital Asset Planning

More and more, people are dying with “digital assets” – not just files or drives on a computer, but also social media accounts, online registrations and rewards points.

Illinois passed a new “Fiduciary Access to Digital Assets” law in 2016 which was intended to make getting access to and managing this property after someone’s death easier and more uniform. The law allows someone to set up instructions online or by using a Will, trust, or Power of Attorney to designate a fiduciary.

A general grant of authority will give your agent control and access over most digital assets, but not electronic communications, which must be expressly mentioned.

Aside from naming a fiduciary for this property, keeping track of the online accounts (and associated passwords) you do have will be of enormous help in administering your estate. Simplifying the administration process after death is a common concern among our clients.

Consider whether you would want online accounts like Facebook or Instagram to be maintained or wiped upon your death – or turned into “memorialized” accounts.

And if you are monetizing your online presence through ad revenue, you have additional business considerations to handle in your digital planning. ■

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## The Effect of Divorce on Estate Planning

Divorce is increasingly common, and can have a dramatic effect on your estate documents. Although many people associate divorce planning with documents like premarital agreements or trusts, a divorce can affect every part of your estate plan, intentionally or not. Estate documents should always be reviewed in the event that you or someone named as a beneficiary or fiduciary in your estate documents is contemplating or has gone through a divorce. By law, divorce will alter certain estate planning documents, but you should be careful not to rely on the statute without examining it in light of your specific estate plan.

### Wills

By Illinois statute, a divorce automatically revokes provisions in a will which bequeath property or designate the now ex-spouse as a fiduciary (such as executor). No action by the testator is necessary for this law to apply.

However, this does not apply to spouses

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other than the testator's own. For example, if you have designated your sister and brother-in-law as guardians for your minor children, even if your sister and brother-in-law get divorced, both nominations will still be valid.

Additionally, the revocation's effect is as if the ex-spouse had predeceased the testator. You should also examine who your contingent beneficiaries are, assuming that the ex-spouse is no longer a beneficiary. For example, if you and your spouse set up mirror wills which provide that the contingent beneficiaries are one-half to your spouse's family and one-half to your family, your ex's family could still be potential beneficiaries at your death.

#### Trusts

A separate statute also provides for the revocation of provisions in a trust which refer to a spouse, in the event of a divorce. However, in addition to being subject to the same issues as Will revocations discussed above, this law only applies to those provisions which are revocable by the settlor.

This means that irrevocable trusts may not permit the removal of a former spouse as beneficiary or trustee. This can be a benefit to using an irrevocable trust, since it offers more surety that a trust will not be changed even under pressure, but it can have a disastrous effect on a couple who are no longer married, but are tied together through the trust.

#### Life Insurance

As of January 1, 2019, Illinois has a new law which will remove ex-spouses named as beneficiaries on life insurance following a divorce. This does not apply to all situations, such as if the spouse was named as designee for benefits payable for child support, or to policies subject to ERISA regulations. Again, you must determine who the contingent beneficiaries would be. The other danger is that an insurance company which mistakenly pays out to the ex-spouse will not be liable to the correct beneficiary unless the insurance company has received notice of the divorce before they make the payment.

Prior to this new law, life insurance beneficiary designations were not revoked by divorce. This is an important update in the law, even with its limitations.

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### The Great Cash Dash



When a company is unable to locate the original owner of property, the funds are sent to the state treasurer's unclaimed property department to be held until someone files a claim for it. Things like paychecks, dividend checks, safe deposit boxes and other cash or proceeds may all make their way to the state.

Illinois' unclaimed cash program can be found at: <https://icash.illinoistreasurer.gov/>

Simply type in your information to find out if there is unclaimed property waiting for you!

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### Retirement Accounts

Retirement accounts designating a spouse as a beneficiary are not changed by a divorce. You must proactively change those beneficiary designations.

Additionally, although a judgment may award the account to one or the other spouse, separate documentation may be needed to complete the transfer of ownership, which will otherwise not be effective.

### Powers of Attorney

Like other estate planning documents, these are revoked upon entry of a divorce decree. However, you may want to revise or revoke these if you are even contemplating divorce, since keeping your soon-to-be ex-spouse named as your agent for property and health care matters may not be desired.

### Final Comments

Although the parties are generally not permitted to transfer or re-title assets during the divorce without court approval, many estate planning documents can be updated without court approval because they involve only prospective future interests. Divorce can take a long time from initiation to completion, so deciding to wait until “everything is settled” instead of taking action immediately can have serious consequences.

Stories of people who have gotten divorced but not updated their estate documents, resulting in difficult estate administrations and financial loss after their death, are all too common. ■

## Know Your Estate Terms: A Guide

Estate planning can be a confusing enough without also trying to navigate a whole new vocabulary. Here are some common terms and definitions:

- Beneficiary: A recipient of property, during life or at death.
- Bequest: A gift made at someone’s death.
- Devise: A gift of real estate.
- Disclaim: Refusing a gift, typically after the giver’s death.
- Fiduciary: Person or entity which has a duty of good faith and fair dealing to the principal. Usually refers to executors, trustees, and similar positions.
- Generation-Skipping Transfer (GST): Gifts made which skip at least one generation between giver and recipient.
- Heir: Although commonly confused with “beneficiary”, this is specifically the beneficiary of an intestate estate, i.e., the closest living kin who could receive property at someone’s death.
- Intestate: The estate of a person who dies without a will.
- Irrevocable: A document which cannot be amended or terminated.
- Legatee: A beneficiary named in a will.
- Revocable: A document that can be modified, amended, or terminated.
- Special Needs Trust (SNT): Describes a trust intended to allow a disabled beneficiary to maintain eligibility for government benefits.

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## Coming Up:

1. Farm Planning and Resources for Farmers
2. Medicaid Planning
3. The Small Things: Finding Assets, Dealing with Tangible Personal Property
4. Who's Who: Executors, Trustees, Guardians, and Agents

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