

Finding Security in Times of Strife: The Necessity of Estate Planning during Divorce

By Patricia De Fonte (San Francisco, California)

AN EXCERPT FROM

Estate Planning Strategies

Collective Wisdom, Proven Techniques of WealthCounsel Attorneys



Now available on [Amazon](#).

 WealthCounsel®

44



Finding Security in Times of Strife: The Necessity of Estate Planning during Divorce

By Patricia De Fonte (San Francisco, California)

Divorce can be chaotic and destabilizing. From acrimony between soon-to-be former spouses to confusion about the future, divorce is a legal process that leaves many in a vulnerable state of unease. Clients sometimes hope that their attorney can just make their problems vanish.

Terrific divorce lawyers can be a wonderful resource, but they cannot provide a client with the security for the future that is available through estate planning. Although estate planning might be the last thing on a client's mind during such a challenging time, an empathetic and experienced estate planning lawyer with a broad network can provide an oasis of calm and productivity.

CASE STUDY: CHRIS LEARNS THE VALUE OF A SOLID ESTATE PLAN

Chris was married to Jordan for fifteen years before filing for divorce. They have two minor children, but Jordan's increasingly erratic behavior, substance abuse, and money problems drove them apart. Jordan put the final proverbial nail in the marriage coffin by announcing a relationship with a much younger person from the office.

Chris hired divorce counsel hoping the lawyer would handle all of the problems associated with the marital dissolution, including protecting Chris's and the children's financial interests. The divorce lawyer quickly dispelled that notion, however, by explaining to Chris that a divorce lawyer's focus is on custody issues, asset division, temporary restraining orders, and court filing requirements and deadlines.

The divorce lawyer did give Chris a long list of "chores" but could not help Chris complete these tasks. Naturally, this left Chris feeling tremendously stressed, which was compounded by the fact that Jordan had always handled their finances, insurance, and estate planning. How could Chris possibly ensure that Chris and the children would be taken care of moving forward?

As Chris discovered, in the absence of an estate plan, state law provides default guidelines with little regard to personal wishes. For example, if Chris were to die before the divorce finalized, Jordan might inherit everything. The court could even assign custody of the children to Jordan despite proof of drug abuse in the home. Alternatively, should Chris become incapacitated, Chris's extended family would have to ask a judge for permission to make healthcare decisions, conclude the divorce, or even pay hospital bills. These types of concerns left Chris frozen with anxiety.

Luckily, a close friend knew exactly what Chris should do: **talk to an estate planning attorney**. Experienced estate planning attorneys have the technical skills, emotional intelligence, and breadth of knowledge to prepare a personalized estate plan. They can also spot issues in related fields and should have the network needed to help their client build a new team of advisors the client can rely on.

THE DIVORCEE PROTECTION PLAN

Divorcing clients cannot simply fill out forms and sign documents. They need a partner to help them transition to independence. A great estate planning attorney provides this partnership through empathy, taking the time to gain an understanding of the client's fears about divorce, and knowledge of family finances. Moreover, an estate planning attorney who devotes much of their practice to divorcing clients has the expertise to help each client navigate the path to financial independence by focusing on three key areas:

- Documents
- Insurance
- Advisors

Documents. Estate planning documents answer three questions: “Who is in charge when I cannot be?,” “Who gets my stuff when I die, and how?,” and “Who will care for my children?” The centerpiece of the estate plan is the revocable trust (also referred to as a living trust). A revocable trust is a complex document, but boiled down, it is a description of what happens to assets upon incapacity and death.

Incapacity planning is a potent tool that enables the divorcing client to prevent their ex-spouse from making any decisions about their healthcare and having any control over their finances moving forward. Advance healthcare directives and powers of attorney can allow divorce proceedings to move forward—even in the event of incapacity. Chris found this protection quite empowering, especially the prospect of not having to worry that Jordan would call the shots in a hospital setting or that the divorce would settle in Jordan’s favor by default.

Many divorcing clients worry that their ex-spouse could get their hands on the children’s money. A revocable trust that excludes Jordan from serving as a successor trustee and specifically precludes Jordan from seeking funds from the trust to meet Jordan’s parental obligations addressed Chris’s concerns by ensuring that Jordan could not abuse any position of power or deplete their children’s inheritance.

A trust can also affirmatively provide for therapy and other important mental health-care measures for the children. Chris’s trust ensured that concerns about money would never prevent the kids from spending time with Chris’s family. (Note: Whether a revocable trust can be signed, and the extent to which it can be funded, *pending divorce*, is a matter of local family laws. No assets should be transferred to a revocable trust pending divorce proceedings without the advice of a family law attorney.)

In conjunction with a revocable trust, a strongly worded nomination of guardians can provide the court with a roadmap for individuals in the children’s lives who are better suited to raise them than a neglectful parent like Jordan.

Insurance. Every divorcing client should conduct a full insurance audit with an independent broker. This audit examines all types of insurance (home, auto, renters, umbrella, life, health, disability, and long-term care) to identify where the client may be underinsured. Proper levels of insurance mitigate financial pitfalls. In some scenarios, a divorcing client may also be able to purchase a life insurance policy naming the trust as the beneficiary prior to the completion of the divorce, thereby safeguarding the children’s financial futures.

Advisors. Successfully navigating the correct path through the divorce minefield is always a team effort. In addition to divorce and estate planning attorneys, a financial planner or money coach, a certified divorce financial analyst, insurance experts, mediators, realtors, organizers, tax professionals, therapists, and other professionals can help a client not only survive but thrive.

Chris Puts the Divorcee Protection Plan into Action

Chris was worried, vulnerable, and insecure. By implementing the divorcee protection plan, Chris gained a sense of empowerment, security, and strength, especially knowing that the interests of the children would be fully protected.

Chris's estate plan portfolio now contains a list of new advisors for casualty insurance, financial planning, tax preparation, disability and life insurance, and long-term care insurance.

Chris named trusted friends and family members as successors, agents, and guardians, putting people who are reliable, responsible, and trustworthy in charge should the unexpected occur.

Once Chris's divorce was finalized, the only task left to complete was transferring assets to the trust. Chris's team of advisors received a copy of Chris's certification of trust to ensure that the correct designations were made and to provide a second set of eyes for Chris as the years pass to ensure that the revocable trust remains properly funded. The estate plan was completed. Instead of more stress and hard work after the final divorce decree was issued, Chris was able to face the future with full confidence.



Patricia De Fonte

Patricia De Fonte, JD, LLM practices Estate Planning With Heart.™ At De Fonte Law PC, preserving family harmony and creating empowered savvy clients and heirs is at the core of what we do.