



Impact of Divorce on Estate Planning

Executing a Last Will & Testament and Power of Attorney are important estate planning tools. A basic estate plan can also be expanded to include designating beneficiaries on life insurance policies, bank accounts, IRAs and other assets. Simply having a named beneficiary on a life insurance policy, for instance, makes that asset a “non-probate” asset, meaning the asset transfers automatically to the beneficiary outside of a probate proceeding. If that same life insurance policy had no beneficiary, the proceeds would flow into the estate and be subject to a Probate proceeding. Another example is a bank account with survivorship rights in a named beneficiary where the account balance is intended to transfer automatically to the named surviving beneficiary upon the death an account owner. If that account had no named beneficiary then the funds would become part of the probate estate, and take a significant amount of time before distribution.

An equally important task is the appointment of “fiduciaries”. A fiduciary is a person who is legally bound to act on behalf of another in good faith. Examples are: an Executor of a Last Will & Testament, a Trustee of a Trust, and an Agent under a Power of Attorney. A fiduciary has broad powers over your financial and health care decisions.

The effects a divorce can have on your estate plan can be easily overlooked. In some states, like South Carolina, a divorce can automatically revoke dispositions of property made to your ex-spouse. This may include, but is not limited to, bequests made in a Will, designations as beneficiary on a bank account, life insurance policy, or revocable trust. A divorce can also revoke appointments of your ex-spouse in appointments of Executor, Trustee, or Agent in a power of attorney.

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The effect of a divorce can have a large impact on the estate since the ex-spouse will be considered to have predeceased you. For example, if your ex-spouse was named as beneficiary in your Will and you failed to change it before your death, your ex-spouse would be treated as having predeceased you and will receive nothing; instead those assets would go to the alternate beneficiaries named in your will – this is why giving careful consideration to your alternate beneficiaries is very important. Similarly, if you name your ex-spouse as Executor under your

Will but that provision is revoked by divorce, then your ex-spouse will be unable to serve; your alternate fiduciary will have to fill the role. Revocation of provisions regarding ex-spouses are appropriate in many cases because it is natural to think that if you divorce your spouse, you no longer want the spouse to be entitled to your assets upon death. However, this is not always the case. In some situations, spouses separate on amicable terms and intentionally leave each other as beneficiaries and fiduciary. In many cases this is done for the benefit of minor children.

There are exceptions to this general rule of revocation. For instance, if you designate your ex-spouse as a beneficiary after your divorce and show a clear intent that the ex-spouse remain as beneficiary, then the ex-spouse may still be entitled to inherit.