

Divorce Affects Your Estate Plan

By K. Dean Kantaras and Joanna N. Hotalen

Divorce brings about fundamental changes to your life, including your financial and legal responsibilities, and people often overlook their estate plan. This oversight can result in unintended consequences, such as your soon-to-be former spouse inheriting assets, making medical decisions on your behalf, or retaining authority over financial matters.

Unless your estate planning documents state otherwise, Florida Statute § 732.507(2) provides for automatic revocation of certain provisions contained in your will that benefit a spouse upon entry of a divorce decree, unless expressly stated otherwise in your estate planning documents. With respect to beneficiary designations, Florida law says a designation made by or on behalf of the decedent spouse for the payment or transfer at death of an interest in an asset for the benefit of the former spouse is void at the time the marriage was dissolved by the court prior to the decedent spouse's death, if the designation was made prior to dissolution of the marriage. This statute applies to former spouses who die after July 1, 2012, regardless of when they made the beneficiary designation, and revokes your former spouse's beneficiary status on individual retirement accounts and annuities as described in the Internal Revenue Code of 1986, payable-on-death accounts, employee benefit plans, security or other account registered in a transfer-on-death form, and certain types of life insurance policies and annuities.

Divorce also typically revokes provisions in a trust that directly benefit your spouse, depending on the type of trust and whether it is revocable or irrevocable. If your estate planning documents include beneficiaries other than your spouse, these assets will instead pass to alternate beneficiaries or the beneficiaries of your residual estate post-divorce.

However, be aware of other instances where your spouse's beneficiary status



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is not automatically revoked after the divorce. The statute does not apply to assets where disposition is governed by federal law, such as employer-established benefit plans governed by the federal Employee Retirement Income Security Act of 1974, which supersedes any state law that would otherwise automatically revoke your spouse's beneficiary status. Another instance is where a court order dissolving a marriage requires one spouse to acquire or maintain an asset for the benefit of the former spouse or prohibits them from unilaterally removing the former spouse as a beneficiary of the asset. This is often ordered as a means to secure the payor-spouse's support obligation to the former spouse.

It is important that the attorney drafting your marital settlement agreement (MSA) carefully consider the language stating ownership of non-probate assets, such as payable-on-death accounts. If you wish

to specify in a MSA that a spouse will not receive the death benefits or wish to specify a particular beneficiary of policy, plan, or account, this must be done clearly and unambiguously; otherwise, the spouse who receives the policy, plan, or account as part of the MSA is free to designate whomever he or she chooses as the beneficiary.

After a divorce, estate planning becomes even more critical when you choose to remarry. Blended families present unique challenges, requiring thoughtful strategies to balance the interests of your new spouse with those of minor and adult children from previous relationships. When properly integrated into your estate plan, prenuptial and postnuptial agreements carefully drafted by your family law attorney can greatly assist in clearly defining property rights and inheritance expectations.

There are many other ways that a divorce can upset your estate plan, such as fiduciary appointments. Relying on Florida law to automatically change your estate plan post-divorce is perilous. It is best practice to intentionally update your beneficiary designations and estate planning documents to ensure that you do not unintentionally leave assets to your former spouse. ♦

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