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How does a divorce impact predivorce estate planning?

Commentary: (https://thedailyrecord.com/author/paul-riekhof/?subject=Top+Paul+Riekhof) // September 10, 2024 // 5 Minute Read Divorce is serious business and should be treated as such related to financial and estate planning. Divorcing spouses need to change their estate plans to ensure that their children or... You can read the content in details following link https://thedailyrecord.com/2024/09/10/how-does-a-divorce-impact-predivorce-estate-planning/?title=How+does+a+divorce+impact+predivorce+estate+planning?

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Divorce is serious business and should be treated as such related to financial and estate planning. Divorcing spouses need to change their estate plans to ensure that their children or other beneficiaries are provided for in the event of their passing and to prevent their ex-spouse from receiving an unintentional windfall. The law provides some help to people who do not take the initiative to change their estate plans upon divorce, but it does not do a very good job – certainly not as well as addressing these issues directly.



The laws governing divorce and estate and trust matters often differ substantially from state to state. Many states, but not all, have laws that automatically revoke provisions of predivorce estate planning documents that benefit or empower an ex-spouse upon divorce.


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In Maryland, a divorce decree will revoke all provisions in a will and a revocable living trust that benefit or empower an ex-spouse. This means that any provisions benefitting an ex-spouse in these documents executed before the divorce will be read as if the surviving ex-spouse died before the deceased ex-spouse. The surviving ex-spouse will also be deemed to have predeceased the deceased ex-spouse for purposes of determining who will serve as the personal representative pursuant to the will or as trustee of the revocable trust.



An important related concern is whether a divorce decree will produce a similar automatic impact on predivorce beneficiary designations, including transfer on death and similar clauses. Although 26 states do have such laws, Maryland is not one of them.

Another complicating issue is that many assets governed by beneficiary designations may also be subject to federal law, which generally preempts state law. Federal law will supersede the impact of automatic revocation statutes on certain assets and benefits. In particular, Employee Retirement Income Security Act (ERISA) laws preempt any conflicting provisions of state law for 401(k) accounts, pensions, employer-sponsored group life insurance and other benefits. Under  A, beneficiary designations made prior to divorce typically remain in place until changed by the plan participant. Accordingly, for ERISA-governed assets there is no automatic revocation of predivorce beneficiary designations, despite any state laws to the contrary. Upon getting a divorce, such designations need to be changed.

The important takeaway here is to promptly change all estate planning documents and beneficiary designations upon divorce, regardless of state of residence. It is also wise to make similar changes to everything that can be changed unilaterally once divorce proceedings have begun. If the deceased spouse did not update the estate planning documents and beneficiary designations that they could without their spouse's consent, there is a good chance that many, if not all, of the deceased spouse's assets will flow to the surviving spouse, in spite of the decedent's wishes.



Spousal elective share laws are another issue to consider in this context. These laws provide a spouse who believes they have not been provided with sufficient benefit under their deceased spouse's estate plan to make a timely election to take a statutorily prescribed percentage of the

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Yael OSSOWSKI
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estate in lieu of the benefit that the surviving spouse would receive under the estate plan. A marital settlement agreement will generally waive the right to make such an election. This can be a difficult reality for the intended beneficiaries of a divorcing spouse who dies before a marital settlement agreement is in place.

When making changes to an estate plan during and after divorce, it is important to consider the terms of the divorce decree and/or agreement. A decree or settlement agreement may require that assets that are part of the division of marital property be transferred to the ex-spouse in the event of the other spouse's death prior to such division. There may also be a requirement to carry life insurance or other benefits for the ex-spouse. If so, the respective spouse's estate planning documents or beneficiary designations should provide for these benefits to avoid a contest within the deceased spouse's estate, which would delay distribution of the rest of the assets.

Planning for children or other beneficiaries is another important task to complete post-divorce. If minor children are involved, making provisions for the management of assets for them in the event of a parent's passing is critical. This involves determining who will manage the assets, whether the ex-spouse will be involved, when the assets will become the children's own property and a number of other important issues that, if left unaddressed, could result in substantial additional turmoil. Including testamentary trusts within the estate plan to provide for the children is a good way to accomplish these goals and limit such turmoil.

Making a new estate plan to match the new circumstances upon divorce is an important step to provide peace of mind and security for a divorced (or divorcing) spouse and their intended beneficiaries. At the same time, it can help avoid unintentional benefits to an ex-spouse to the greatest extent possible.

Paul Riekhof (<https://www.jgllaw.com/attorney/paul-riekhof/>) is the managing director, a principal of Joseph Greenwald & Laake and a member of the firm's Estates and Trusts Group.



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Networking Calendar

Today	Tuesday, September 10
Tuesday, September 10	
9:30am	2024 Legal Summit Series:
Wednesday, September 11	
8:30am	Harford County Public Libra
1:00pm	Kent County Life Planning C
3:00pm	Loyola's Govans Farmers M
6:00pm	Estate Planning Evening Se
Thursday, September 12	
10:00am	Caroline County Life Plannin
10:00am	Executive Leadership in Lav
2:00pm	2024 Legal Summit Series:
8:00pm	JOHNNYSWIM w/ Ruby Am
Friday, September 13	
8:00pm	Avery*Sunshine w/ Anthony

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