

Estate Planning After Divorce

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Needless to say, going through a divorce is emotionally, and often financially, draining. After the property has been divided, the custody arrangement has been established, alimony and child support has been ordered, and the final legal fees have been paid, the last thing a newly divorced person may want to do is consult an estates and trusts attorney to plan for the future. However, this is a critical final step following a divorce, and one that is not typically handled by family law attorneys.

While married, a couple may have prepared estate planning documents such as a will, living will, power of attorney for health care, or power of attorney for property. Most likely, the spouses named one another as the primary person to act for the other in the event of death or incapacity and the primary beneficiary of any assets upon death. In Maryland, a divorce invalidates provisions in the will pertaining to the former spouse, and interprets the will as though the former spouse predeceased the other person. Md. Code Ann., Estates & Trusts § 4-105(4). However, if a person fails to update her documents following divorce, a former spouse will continue to have authority to make medical and financial decisions in the event of incapacity.

Even in the absence of formal estate planning during the marriage, most couples have named one another as beneficiaries on employer retirement plans, individual retirement accounts, and life insurance policies. Maryland courts have been clear that they will uphold beneficiary designations naming a former spouse as a beneficiary where an individual fails to update her beneficiary designation after divorce. E.g., *Cassiday v. Cassiday*, 256 Md. 5 (1969) and *PaineWebber, Inc. v. East*, 363 Md. 408 (2001). This is true even if the person is remarried at the time of her death or the separation agreement has general language waiving any rights to the other person's pension plan.

In certain circumstances, the rules established by a plan sponsor or federal law may override the designation of a former spouse as a beneficiary. For example, sponsors of a retirement plan may have language in their agreement stating that upon divorce, a bequest to a former spouse is nullified unless the account holder affirmatively elects to have her former spouse continue as a beneficiary. Furthermore, applicable ERISA provisions may require that a new spouse must receive her spouse's pension benefit upon death even where the former spouse is named as the beneficiary. *Boggs v. Boggs*, 520 U.S. 833 (1977).

After divorce, most people want to make sure that their assets go to their children if they die. However, minors are not allowed to receive more than a nominal amount of property outright. Therefore, it is necessary to designate an adult individual or institution to serve as custodian or trustee of such funds. If this is not done, the court will appoint a guardian in its discretion to supervise such property until the child attains the age of majority. The court may even select the former spouse as property custodian. In Maryland, this court process is expensive, time consuming, imposes onerous reporting requirements on the property guardian, and allows the child to receive all assets at age eighteen. Ideally, a divorced parent of a minor child will create a trust for such child in her will, and will name that trust as beneficiary of all probate and non-probate assets.

When a divorce is finalized, it is important to stop looking back and to begin planning ahead. The advice of an estates and trusts attorney and other trusted advisors is necessary to ensure that the needs of you and your dependents will be met going forward.

The Law Office of Jill A. Snyder, LLC, concentrates on trust and estate planning, probate, and small business advisory services, with offices located in Towson and Baltimore, Maryland. The information contained in this article is provided only as general information for educational purposes and is not intended to provide specific legal advice. Please consult a competent attorney in your jurisdiction to obtain legal advice that is specific to your situation.

Jill A. Snyder, Esq. is licensed to practice law in the State of Maryland. Hiring a lawyer is an important decision and should be done after careful evaluation. Jill A. Snyder, Esq. encourages you to call her at 410-864-8788 or e-mail her at jill@snyder-law.net for additional information about her qualifications or to discuss your legal needs.