Beneficiary Designations and Estate Planning After Divorce

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If you are like most people who are getting divorced, or who have just gone through divorce, you no longer want your ex-spouse to be the beneficiary of your estate or to put your child(ren)in a position to be disinherited if your ex-spouse gets married again after the divorce. If your original plan was to leave everything to your spouse and then to your child(ren), your ex-spouse may still get much of your estate if you don't modify your estate plans after divorce.

While a divorce decree often automatically revokes any disposition of property made by your will to your ex- spouse (check your state law) , your beneficiary designations – on things like your insurance and IRA – will not automatically be revoked by your divorce decree.

After a divorce, you should carefully review and probably amend the following items unless you still want to leave assets to your ex-spouse:

1. Beneficiary designations for the following financial instruments:

- Employer retirement plans
- Individual Retirement Accounts (IRA)
- Life insurance
- Annuities
- Health savings accounts

2. Your will.

3. Transfer on Death (TOD) investment accounts

4. Payable on Death (POD) bank accounts

5. Revocable trusts

6. Advanced estate planning structures such as irrevocable trusts

In most cases, you can change these items by simply requesting, completing and filing the appropriate form. Since retirement and employer plans may represent the most significant portion of your net worth and liquid assets, it is particularly important that you amend the beneficiary designations on these accounts, as soon as possible after your divorce.

Because these pass to the named beneficiary by operation of contract, as opposed to by probate, your designations supersede your will**. If no changes are made, your ex-spouse who was originally**

designated as the beneficiary will be entitled to the benefit, despite the existence of a will or trust designating otherwise.

Guardianship & Remarriage Issues

In a perfect world, if something happened to you, your ex-spouse would assume guardianship of your minor child(ren). However, that assumes that your ex-spouse wants to raise the child(ren)and is fit to do so. If your ex-spouse is likely to assume guardianship, he or she will be responsible for providing a residence for the child(ren), and providing care, support and education.

If your are concerned that monies you leave to your child(ren)may not be used as you would like if your ex-spouse has access to those funds, you can specify in a Revocable Living Trust (RLT) that the trustee who takes over in the event of your death pay for specific items out of the funds of the trust such as private school tuition, extra-curricular activities, a car at a certain age, college applications and tuition. Thus, you can protect your child(ren)'s inheritance by having an RLT in place with a trustee who will carry out your wishes which you specifically designate. The money would not be paid directly to the guardian (your ex-spouse), but would be used for the benefit of the child(ren). This also prevents your assets – which should be for the benefit of your child(ren)– from getting into the hands of your ex-spouse's new spouse if he or she gets married again.

You should also consider naming successor guardians in the event your ex-spouse does not want to raise the kids or is otherwise unavailable, or if you believe your ex-spouse to be an unfit parent.

Remarriage

If you decide to get married again you should know that without legal documentation to indicate otherwise, your new spouse may generally be entitled to one-half of your marital estate. This could mean that you might unintentionally at least partially disinherit your existing child(ren). Your new spouse may not end up being the guardian of your child(ren), but he or she may receive half of the assets intended to provide for them.

Most divorced parents typically desire to leave assets to care for BOTH their new spouse and their child(ren). You should sit down with a financial advisor and an estate planning attorney to assess the options. An easy solution may be the use of additional life insurance to help you carry out your wish to provide for both your minor child(ren)and your new spouse.

Complex Changes

If you have advanced estate planning structures such as irrevocable life insurance trusts (ILIT's), Qualified Personal Residence Trusts (QPRT's), and charitable trusts they will be very difficult, if not impossible, to amend, since the original intent of creating these structures was to make an irrevocable election, usually structured to benefit both husband and wife together. It is critical that you work closely with your attorney, as well as the trustee, to explore possible options.

You should also keep in mind that many state have an “elective share statute” which means that a spouse (whether estranged or not) will automatically be entitled to a certain percentage of your estate. However, through proper planning, there are a number of ways to avoid or limit the assets which are subject to the elective share, and to provide that your estranged spouse does not receive more of your estate than you want. This is another reason it is advisable to re-visit your estate plan following divorce.

If any of the issues raised in this article interest you, you should revisit your estate plan with the assistance of a qualified estate planning attorney and a financial advisor.