

# Estate Planning After a Divorce

During a divorce proceeding, a couple or the court decides how to divide their assets and pay off their debts. The parties or the court also determines custody and child support issues if there are children. When the divorce is finalized, an individual acting prudently should review his or her estate plan to update documents to reflect a new life situation.

Estate planning documents that generally need review after a divorce are:

- Last will and testament;
- Living trusts;
- Power of attorney;
- Health care proxy (sometimes called a health care power of attorney);
- Life insurance policies; and
- Retirement accounts

When you review your will, you need to revise it to change beneficiaries (such as your ex-spouse, if you so desire) as well as review specific bequests of property that you may no longer own due to your divorce. You will have to review who is the designated executor of your will and determine whether to change the designation (the executor could be your ex-spouse and you may not want that).

You need to review any designated trustee for a testamentary trust that you previously stated in your will. Also, you may want to change how you distribute assets to your children, if any.

For example, you may believe that your ex-spouse would not properly manage monies you would leave to your children. In that case, as part of your will, you may want to set up a trust which the money will go into, and designate a trustee to manage that money. Perhaps the trustee could be a sibling of yours.

## More Points to Consider

Who have you designated as guardian for your children? Generally, if someone who had minor children dies, the other spouse would be the first in line to be the legal guardian, if not already awarded custody of the children. In any event, it would be good to name a guardian for the children in the scenario where your ex-spouse is incapable, unwilling or unable to care for the children. The court would not automatically designate a guardian based on the wishes stated in your will, but will look to your designation as an indication of your intent.

The same is true when you review your "living" trusts. These are trusts wherein you currently have control. Possibly, you had a trust with your ex-spouse. If revocable, in the divorce proceeding, you and your ex-spouse would have revoked a joint trust. If you have a trust in your name or have to create a new one, you may have to change the trustee's name and revise the assets in the trust due to your divorce.

If you previously had a power of attorney (which designates who handles your finances in the event you become incapacitated or need help in the future), you most likely will have to change the designated attorney in fact. You would also have to change the name of your spouse if you named her or him as your designation to make health care decisions for you in a health care proxy.

Further, you need to review your insurance policies, pension plans, and retirement accounts to make sure that the designated beneficiaries meet the requirements of the divorce settlement or judgment, and meet your current desires.

Consult with us if you have questions about these issues and you're contemplating, in the middle of, or have completed a divorce.

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