

Reid B.
Roberts, Esq.

Family Law Update

Having an ex-spouse or his or her family member act as personal representative of your estate, or as trustee of trusts established for your children, may no longer be desirable.

Strassburger
McKenna
Gutnick
&
Potter

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
322 BOULEVARD OF THE ALLIES
SUITE 700
PITTSBURGH, PA 15222
(412) 281-5423
(412) 281-8264 FAX

Estate Planning Checklist For the Recently Divorced

How would you feel if you knew that upon your death your entire estate would be distributed to your ex-spouse? How would your children or present spouse feel if your ex-spouse sued your estate for amounts due under a divorce decree?

Estate and financial planning matters often are overlooked in a divorce even though, in all likelihood, plans will become outdated.

Also, other issues arise as a result of becoming a single parent. And the divorced person must determine whom he or she can depend on to handle personal and financial matters in the event of disability. Here are some of the issues that arise in estate planning for the divorced.

Divorce Agreements

Before changing any estate plan documents or beneficiary designations, first review divorce or settlement agreements or decrees. Often, agreements create obligations to be paid on death. Failure to abide by these provisions may result in a claim by the surviving former spouse against your estate. Also take into account any benefits that you will receive under the agreement.

Will and Trusts

Subject to any requirements under a divorce or settlement agreement or decree, review bequests and beneficiary designations under any will or trust and

change them to reflect new goals and intentions. Generally, this involves deleting bequests and removing the ex-spouse as beneficiary from the document — don't rely on operation of law to delete an ex-spouse. Also review any trusts of which you are a beneficiary. Does the trust agreement contain provisions for your former spouse? Are you able to override such provisions through the exercise of powers of appointment?

Fiduciaries

Having an ex-spouse or his or her family member act as personal representative of your estate, or as trustee of trusts established for your children, may no longer be desirable. Also, your parents' estate plans may name your ex-spouse as a beneficiary or trustee. A gentle reminder to them may be in order. Perhaps a co-trustee is required. Review fiduciaries and change them appropriately, and reflect guardianship in your will. Note, however, that the surviving natural parent may have automatic custody unless proved unfit.

Establishment of Trusts

If minor children are involved, you may want to consider protecting them in the event of a second marriage through the use of irrevocable, spendthrift trusts and a premarital agreement. Trusts upon death are important to protect the children's assets.

Beneficiary Designations

Review beneficiary designations carefully and change them where appropriate. You may want to consider having the benefits paid to a trust or trusts for the

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children, rather than paid directly to the children. Consider the amount of insurance coverage needed to provide for adequate childcare, maintain the children’s home and provide for education. In your absence, their needs may increase.

Also, estate planning and insurance planning often focus on paying taxes upon the death of the surviving spouse. Because a spouse no longer is involved, the marital deduction is no longer available and taxes will be due upon death, regardless of the survivorship of an ex-spouse. It may be beneficial to transfer a life insurance policy to an ex-spouse. If the transfer is incident to the divorce and within one year of the end of the marriage, it will qualify for favorable tax treatment. Also, the continued payment of premiums by the insured can qualify as alimony if statutory conditions are met.

Health Insurance

The health insurance needs of both spouses must be addressed. COBRA, when applicable, can facilitate coverage to a nonemployed former spouse for up to 36 months, but even that coverage can be terminated if the employer ceases to provide group health coverage. Accordingly, alternative lines of coverage need to be explored.

Disability Planning

Planning for disability, perhaps through the purchase of long-term care insurance, is essential, particularly when minor children are involved. Because there is no

second live-in parent, long-term care insurance can provide coverage to allow the disabled person to remain at home. Without it, the cost of adequate in-home care may be out of reach.

Powers of Attorney

Execute durable powers of attorney, which are those which survive disability. If any property powers or healthcare powers were executed prior to divorce, review the choice of agent and change it to remove a former spouse. Imagine an ex-spouse having the unfettered power to deal with your property or to make healthcare decisions on your behalf if you are unable to do so!

Title to Property

Title to property divided by reason of the divorce should be verified to make sure all is in order. Have deeds been recorded? Has jointly held property been changed to tenancy in common or otherwise retitled?

Organization Is Critical

It is even more important after divorce to list the location of all important documents, safe deposit boxes and keys, and names of attorneys, accountants and other professionals. Although some of the areas to consider upon divorce have been touched on, the importance of a thorough review of all estate and financial matters cannot be overstated. Call me for assistance in making sure your estate plan is up-to-date considering your current family situation.

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The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.