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Legal knowledge, human wisdom: Helping you plan today, so you can sleep better tonight.

Your Estate Planning Team

Your Divorce Decree: The First Step in Estate Planning

You and your spouse have recently divorced, and the judge has signed the divorce decree. Now what? Although you may feel that you have spent enough time and money on lawyers, there is one last attorney you need to talk to: an estate planning attorney. If you and your former spouse created an estate plan or named each other as beneficiary on any of your accounts or property (*assets*) while you were married, your divorce decree or state law may automatically revoke parts of that plan—particularly provisions naming your former spouse for decision-making roles such as executor, trustee, and agent under powers of attorney. However, not all changes happen automatically, and your former spouse could still remain a beneficiary of your trust, a joint property owner, or a named beneficiary on your assets. Additionally, appointments involving your former spouse's family members are usually not revoked by law and may still be in effect. That is why it is necessary for you to review your estate plan with an attorney to ensure that your hard-earned money and property is distributed in a way that aligns with your new goals and life circumstances. If you have not done any planning since your divorce, now is the perfect time to get your affairs in order.

When you meet with the estate planning attorney, it is crucial that you bring all necessary documents, including a copy of your divorce decree. This document will help determine what obligations need to be included in your estate plan, what assets you now own, and how those assets are titled.

What Is in a Divorce Decree?

Support Obligations

Your divorce decree may state that your spousal or child support obligations require you to purchase life insurance to address the possibility that you pass away before fulfilling the entire obligation. If you have a child support obligation, it may be wise to designate your living trust as the beneficiary of the life insurance policy, if the terms of the divorce decree so permit. This approach would allow distributions to the minor children to be made by a trustee instead of as a lump-sum payout to your former spouse, who may not use the funds as intended.

Property Division

The divorce decree will also contain a section on the division of your marital property. It is helpful to provide this information to the estate planning attorney to present an accurate picture of your current property and financial accounts.

In addition to identifying the assets you now own, how you own them is incredibly important. Ownership of assets previously owned by you and your former spouse as joint tenants or tenants by the entirety may have changed to ownership as tenants in common under state law. This change is important to understand because, if you had passed away before your divorce, your now-former spouse would have automatically received your interest in the asset. However, if the ownership has changed to tenants in common, your interest will likely go to someone else when you pass away. If you do no planning, your interest in the asset will be transferred

according to state law, which may not coincide with your wishes. It may go to your children, parents, or siblings, depending on who survives you. As part of your estate plan, you can choose who will receive your interest and how they will receive it.

What Effect Does the Divorce Decree Have on an Existing Estate Plan?

Last Will and Testament

Depending on the state in which you live, divorce can have a varying impact on your will. In some states, divorce revokes all provisions in your will that benefit your former spouse. Some state laws also revoke your former spouse's appointment as personal representative. If you die before executing a new will, the law determines who receives your probate assets (generally your children if you have any; otherwise, your closely related family members in a predetermined order of priority). Even if gifts to your former spouse are automatically revoked by law after the divorce, gifts to your former spouse's relatives—such as in-laws or your stepchildren—are not necessarily revoked. That is why it is essential to promptly update your estate plan to reflect any changes you wish to make.

Revocable Living Trust

As with wills, laws regarding what happens to a provision in a revocable living trust vary by state. Some state laws revoke all provisions relating to the former spouse, while others leave the trust intact. Although there may be provisions in the divorce decree that revoke all or part of your trust, it is important to review the trust documents and make any desired changes to avoid confusion. Also, in most states, gifts to your former spouse's family under the trust may not be revoked as a result of the divorce.

Financial Power of Attorney

In some states, filing for divorce revokes the former spouse's appointment as *agent* (the person who would act on your behalf) under a *financial power of attorney*. In other states, however, a divorce does not revoke your spouse's ability to act as your agent. In either case, if there are any outstanding powers of attorney on file with third parties (e.g., at your bank or with a financial advisor), inform them of your divorce and provide them with a revocation or an updated power of attorney so they know that your former spouse is no longer authorized to act on your behalf.

Medical Power of Attorney

As with other estate planning documents, state laws vary as to whether your former spouse will still be able to make medical decisions for you if you are unable to make or communicate them yourself. Some states revoke the designation of your former spouse as your agent for medical matters as a result of the divorce, while others do not. In either case, it is incredibly important to keep this document up to date and to provide the updated versions to the necessary healthcare professionals.

Life Insurance

Because a life insurance policy is a contract with a third party, a divorce may have no effect on the beneficiary designations. If you named your former spouse as a beneficiary of the policy prior to your divorce, most states will not automatically revoke that designation after a divorce. Even if the designation is revoked under state law, it is important that you change the beneficiary designation so the company is on notice of your wishes and to avoid any confusion. In some cases, although the former spouse is no longer entitled to the life insurance proceeds, if the insurance company is not informed of the divorce or given an updated beneficiary designation, the benefit will be paid out to the named beneficiary (former spouse), and it will be the rightful beneficiary's responsibility to sue and collect the proceeds from the former spouse. No matter what the applicable state law says, it is important to review and update your beneficiary designations after a divorce to avoid unnecessary drama and confusion.

Retirement Accounts

For retirement accounts governed by the Employee Retirement Income Security Act of 1974 (ERISA), such as 401(k)s, beneficiary designations are not automatically revoked upon divorce. Even if state law would otherwise remove a former spouse, ERISA preempts state law. To ensure that your former spouse does not receive the benefits, you must affirmatively change the beneficiary designation unless your divorce decree requires you to keep them as the beneficiary.

You Need an Estate Plan Now More Than Ever

As a newly single person, you are now in full control of your money and property. If you do not have an estate plan in place, state law will determine what happens to your hard-earned money and property. If you already have estate planning documents in place, you need to review them now that your circumstances have changed. Even if gifts to your former spouse are revoked under state law, you need to ensure that the alternate plan built into your documents is still what you want. Call us today so we can schedule an appointment to protect your new future and those you love, and do not forget to bring the divorce decree.



Put Us to Work For You

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