



Robinson

THE ROBINSON LAW FIRM

ESTATE PLANNING AFTER DIVORCE

DAHLIA ROBINSON-OCKEN

One area that is often overlooked in the divorce process is the need to update estate planning. Most people would agree that their ex-spouse is the last person they want to inherit their assets when they die—or to have that person make life and death decisions for them. But that is exactly what can happen – and often does – when these documents are not updated.

Beneficiary Designations

Assets that have beneficiary designations (e.g., life insurance policies, employer retirement plans, IRAs, annuities, health savings accounts, investment accounts and some bank accounts) are not controlled by a will or trust. Instead they will be paid directly to the person listed as beneficiary (unless that person is deceased, is a minor, or is incapacitated when the insured dies). Because most married people name their spouse as beneficiary, these should be changed right away.

However, naming the right beneficiary is critical. This is especially true for tax-deferred plans because of possible estate and income tax issues and the potential for long-term tax-deferred growth. Be sure to seek expert assistance before naming a beneficiary on these accounts.

Children and Other Beneficiaries

If you name children as beneficiaries and they are minors when you die, a court guardianship must be established for them until they become age 18—at which time they will receive the entire inheritance. Until then, the other parent (your ex-spouse) could be named by the court to manage the funds. Naming another individual (for example, your parent or sibling) as beneficiary with the understanding they will use the money to care for your children until they are older is also risky. You have no guarantee they will follow your instructions, they may be tempted to use the money for their own needs, and the money would be exposed to their creditors.

Naming a trust as the beneficiary instead and selecting your own trustee (which may still be your parent or sibling) is a much better choice. A trustee can be held liable if he/she misuses the trust assets. An ex-spouse can be prevented from having access to the money, and you can control when your children will inherit. Money that stays in the trust is protected from irresponsible spending, creditors, and even spouses. For all these reasons, a trust is an excellent choice as beneficiary instead of an individual, regardless of his/her age.

Your Will and/or Living Trust

If you do not update your will or trust, your ex-spouse may inherit your assets. And if he/she remarries, the new spouse and his/her children could inherit your assets, leaving your children and family with nothing. If you provide support to your parents or others, be sure to include them in your estate plan.

If you have minor children, you need to name a guardian for them in your will. (Even if you have a living trust, a simple will is required to name a guardian and to direct any forgotten assets into your trust.) Upon the death of one parent, usually the surviving parent will become the sole guardian. But if your ex-spouse has also died, had his/her parental rights terminated, or becomes an unfit parent, the court would have to appoint a guardian and would appreciate knowing your choice.

Powers of Attorney

Most married couples give each other the power to make health care decisions, including those regarding life and death. Financial powers are also usually given to each other so that one can manage the other's financial affairs without interruption. These are often quite broad, including the ability to buy and sell real estate, open and close financial accounts, change beneficiary designations, collect government benefits, etc. Instead of your ex-spouse, you can name a parent, sibling, close friend or adult child to have these powers and act for you when you cannot.

You Need Professional Guidance and Assistance

You probably need an experienced attorney more now to help you with updating your estate plan than you did when you were married. Don't procrastinate on this. Make sure you protect yourself, your children and others who depend on you.

