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Make Sure Your Ex is Axed From Your Estate Plan Documents

After months of emotional and financial turmoil, a finalized divorce can be a welcome end to a stressful time. Now what? Before you move on with your life, make sure you truly sever all financial ties to your former spouse by updating, or even creating, your estate plan. Failure to do so can lead to unintended beneficiaries such as your former spouse claiming your assets at your death, resulting in costly litigation that can drag on for years after you die.

Any good estate plan involves either a will alone, or a will and trust that work together, to dispose of assets, as well as durable powers of attorney that name someone to make financial and medical decisions in the event of your incapacity or disability. Because most married couples name each other to receive and manage their estates at death or incapacity, each of these documents should be reviewed and updated after a divorce. Removal of a former spouse as a beneficiary and fiduciary (personal representative, trustee or agent to act for you) will make your wishes absolutely clear and ensure your former spouse will not benefit from your estate after your incapacity or death at the expense of your intended beneficiaries.

Reviewing and updating your beneficiary designations is also extremely important. All life insurance policies, retirement accounts, annuities, pension benefits, and transfer to a beneficiary at your death, including “transfer on death” or “pay on death” designations, should be revisited and updated accordingly. These “non-probate” transfers are not governed by your will or trust. Rather, the beneficiary forms on file with the insurance company or financial institution, in most states, dictate who will receive the assets at your death.

This is especially true if your insurance, retirement or pension benefits are provided through your employer. These employer-based plan benefits are governed by federal law, which generally states that the documents on file with the plan administrator at death must be followed. In other words, if you get divorced and do not update your beneficiary designations to remove your former spouse as your beneficiary, your former spouse may very likely be paid your benefits at your death. This is a result most divorced couples would rather avoid.

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