

Estate Plan Horror Stories: What Happens if You Do Not Have an Estate Plan in Place During Divorce



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Over my 23 years of estate planning and estate administration practice, a few stories have highlighted the importance of having an estate plan in place during a divorce and following through with the transfer and documentation of assets after the divorce. Otherwise, your desires may not be achieved.

Story #1: Unintended Beneficiary

Brandon received a large multi-million dollar settlement because he was in an accident. Brandon and Emily signed a prenuptial agreement prior to getting married to keep the settlement money as Brandon's sole and separate property. Brandon held his settlement money in a trust. After they had been married for a while, Brandon added Emily as an 80% beneficiary of his Trust. His remaining family members were a 20% beneficiary of his Trust.

After a ten-year marriage, Emily filed for a divorce. Brandon got sick and two days before the filing of the divorce decree with the Court, he died from unknown causes.

Brandon's Trust stated that Emily would receive 80% of the Trust if they were married at his death. They were married at his death because in Arizona, the divorce is not final until the decree is filed. Emily received 80% of his Trust, or approximately \$14.4 million and Brandon's family members received 20% of his Trust, or approximately \$3.6 million.

If Brandon had changed his estate plan at the time of filing his divorce, which would have only entailed advising his lawyer and signing a trust amendment, his family members would have received 100% of the Trust after estate taxes are paid (or approximately \$10.8 million), instead of the 20% that they received because he did not change his estate plan.

Moral to the story: When filing for divorce, change your estate plan immediately, or your soon to be ex-spouse will receive your assets if you die prior to finalization of the divorce. Not only will your ex-spouse receive your assets, but he or she will also be able to make decisions about your financial and health care decisions if you were to become incompetent before the divorce was final. The ex-spouse will usually also be in control of your assets as the Personal Representative and Trustee of your Trust if needed unless changed prior to the divorce becoming final.

Story #2: Extra Expenses

John and Sarah agreed to a divorce. The documents stated that all of their retirement plans would be divided in half, which would require a lawyer to draft three orders that must be filed with the court. Since they were splitting the costs, to keep the costs down, they agreed to equalize the values of the qualified plans such that the excess was distributed to one of them from the other using one order and they each kept their own retirement plans. The lawyer drafted one order which was not yet signed and filed with the court when John and his new wife died on their honeymoon. Three orders had to be prepared and filed because the parties had to follow the documents as written.

Moral to the story: Obtain the orders and get them filed as soon as possible after the divorce decree is filed.

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