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Update Your Estate Plan Following Divorce

Divorce is often traumatic and is almost always an emotional and overwhelming process. It typically changes living arrangements and results in the division of assets and the apportionment of custody for minor children. Often, people in the process of divorcing become so caught up in these changes that they neglect to consider how the divorce will impact their estate plans. It almost goes without saying that estate planning goals may change significantly following a divorce.

Many people believe that estate planning documents implemented prior to the divorce are automatically rescinded. This is not entirely true. If you do not review and update your estate plan following divorce, you run the risk that your assets will be distributed in a way that is contrary to your wishes. Here are some things to consider to ensure that you, your loved ones and your assets are protected following divorce. First, review the beneficiary designations on your retirement accounts and life insurance policies.

While New York has a law that “automatically” revokes the transfer of assets by will, trust and certain beneficiary designations following divorce, do not rely on this. Third parties, such as insurance companies and retirement plan administrators, who are not aware of your divorce are not responsible if they make payment to the wrong beneficiary - your ex-spouse! The most effective way to ensure that your retirement and life insurance proceeds will be distributed in accordance with your wishes is to update your beneficiary designations following divorce. Another thing to keep in mind is that, generally, when estate planning documents are prepared, the spouse is named as both the beneficiary and the fiduciary or agent, i.e. executor, power of attorney, health care proxy, trustee. If you no longer want your spouse to serve in this regard, it is important to amend your estate planning documents. Although in New York your ex-spouse will be treated as though he/she predeceased you, and he/she will not be permitted to inherit as a beneficiary or to act as your fiduciary, problems will arise if you have not named a successor. This causes uncertainty and confusion at just the time when certainty is important - in the event of your incapacity or death. It is important to address inconsistencies or gaps that may be created in your estate plan following a divorce.

One final issue to consider following divorce is the impact of a subsequent marriage on your estate plan. The decision to marry will impact your estate plan and may drastically alter your provisions for the children of your first marriage. Under New

York law, your surviving spouse is entitled to a one-third (1/3) share of your estate. If you intend to leave all your assets to children of a first marriage and then marry again, the new spouse is automatically entitled to one-third (1/3) and your children will only receive two-thirds (2/3) of your estate.

To avoid this result, you should consider implementing a prenuptial agreement before the marriage takes place. If you are interested in updating your estate plan, due to a divorce or as a result of any other change in life circumstances, please contact us to arrange for a consultation.