



Armor Trust Attorneys

How Does Divorce Effect Estate Planning in North Carolina?

After you have gone through the difficult process of divorce, the property has been divided, and the divorce decree has been signed, you might think you are done with legal matters but do not overlook changes to your estate plan. We often recommend that you create a revocable living trust immediately and transfer most of your assets to yourself as trustee. This has the advantage of identifying and segregating your assets before you enter another relationship or marriage. This is discussed in greater detail below, but first it is important to remember that you might not be starting over with a completely blank slate.

In North Carolina, if you write a Will during marriage and then get divorced all of the provisions in your Will that benefit your former spouse are revoked (North Carolina General Statute Section 31-5.4). If after your divorce, you do not change your current Will or sign a new Will, your ex-spouse will not receive any inheritance under the Will signed when you were married. It also means that if your former spouse was named as executor or trustee in your Will that part of your Will is revoked automatically and the position would go to the named alternate executor or trustee. This is fine if the alternate is someone that is still acceptable, but often the successor is a family member or even a relative of your ex-spouse. The automatic

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revocation provided by Section 31-5.4 does not apply to family members of your ex-spouse. Remember, you probably wrote this Will when there was not an issue with naming, for example, your spouse's sister as the alternate Trustee. But now that you are divorced do you really want her to be the Trustee? At the very least, after a divorce you should discuss your new situation with an attorney and have that attorney review your existing Will.

So what if you do not have a Will? What if instead, **while you were married** you created a Revocable Living Trust and left everything to your spouse through the Trust? If you have a Revocable Living Trust that was created **during your marriage** and leaves property to your spouse, it is extremely important to consult an attorney. Why? Because the automatic revocation provided by Section 31-5.4 of the North Carolina General Statutes **does not** apply to Revocable Living Trusts. This means that if you die without changing your Trust, your former spouse will be entitled to inherit whatever you have left to them through the Trust. They may even be named the successor Trustee, and they would still be entitled to act in that position. If you have this situation you must have an attorney write a replacement Revocable Living Trust or amend and restate your current Revocable Living Trust to remove your ex-spouse.

There are definite benefits to creating a Revocable Living Trust **after your divorce**. In addition to the typical benefits of avoiding probate and guardianship, a Revocable Living Trust helps protect your assets from future divorce. What does

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this mean? Well, you have just fought hard for the settlement you received from the divorce. It would be wise to protect those assets from future relationships or future marriage. By putting your assets into a Revocable Living Trust after a divorce, you are re-titling them to the Trust. This means that when you remarry, it is very clear that the assets in your Trust are the assets you are bringing to the marriage. As long as you keep those assets segregated in the Revocable Living Trust and do not co-mingle them with marital assets, you have clear evidence of what assets you brought to the marriage the next marriage ends with divorce. This same segregation of the assets you bring into the next marriage can be of great help if your next marriage continues until death, especially if either you or your next spouse has children by a prior marriage.

Additionally, you should not overlook assets that have beneficiary designations such as Life Insurance, 401(k)s, IRAs and Annuities. While you were married your spouse was probably the primary beneficiary of those assets. However, now that you are divorced, you do not want your former spouse to inherit those assets at your death. You will need change those beneficiary designations to remove your ex-spouse and name someone else. You may want to consult an attorney if you are considering naming minors as beneficiaries of these assets.

What if you have Estate Tax liability? When you were married your Will probably contained something called a Credit Shelter Trust which took advantage of the marital deduction. Now that you are no longer married you cannot use the

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marital deduction to shelter assets of your estate from estate taxes. This will **seriously** impact what estate planning. If you are in this situation, you should speak with an attorney about what options you have to protect your assets from estate taxes **other than** the marital deduction.

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