

After a Divorce, Split Up Your Estate Plans Too

By LIZ MOYER

If you have just gotten divorced, you may be focused on getting on with your life. But make sure you also have updated the financial arrangements that kick in at your death.

Failure to do so—or to alert all relevant parties to the changes—could result in certain assets and benefits unintentionally going to your former spouse or his or her family upon your death.

Lawyers point to a current court case in New York as an example of how things can go wrong. The family of Robyn Lewis, who died five years ago at the age of 43, is battling her former in-laws, who stand to inherit a \$200,000 home in Clayton, N.Y., even though she and her husband divorced in 2007.

Ms. Lewis executed a will in 1996 that named her then-husband to receive her property after her death. That included the house, which had been in her family for generations. She named her then-father-in-law as the secondary beneficiary.

While under New York law the divorce automatically cut her ex-husband out of her will, it didn't cut out her father-in-law, who presented a copy of the 1996 will to the court. Ms. Lewis, according to her family, wrote a new will after her divorce that changed the beneficiaries, but family members were unable to locate it to offer it as evidence.

Last year, the New York Fourth Department Appellate Division decided in a 4-1 ruling to uphold the 1996 will. Lawyers for Ms. Lewis's family are taking the fight further and are scheduled to argue their case in the New York Court of Appeals, the state's highest court, in March.

"The lesson is to stay on top of your estate plans," says Elizabeth Devillers Moeller, a lawyer at D.J. & J.A. Cirando in Syracuse, N.Y., the firm representing the Lewis family. That means drafting a new will—and making

sure that appropriate people have copies of the document or know where to find it.

"The key is to make sure your estate planning documents—not only your will but also your power of attorney and health-care proxy—clearly reflect your intentions," says Julian Modesti, a lawyer at Syracuse firm Menter, Rudin & Trivelpiece who is representing Ms. Lewis's former in-laws.

Divorcing couples who previously used an estate planner together should individually seek out new advisers to avoid any conflicts of interest, says Mary Schmidt, a Boston estate lawyer.

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◆ **Name new proxies.** There are a number of other documents that can easily be revoked before a divorce, lawyers say, including financial powers of attorney, health-care proxies and even something in New York state called an appointment of agent, which designates a person to take care of disposing of your remains after your death.

Changing these documents requires tearing up the old ones and filling out new ones naming other people in those roles. The new documents should start out saying they revoke and replace the older documents, Ms. Schmidt says.

"My advice is to get this done as soon as possible," she says. "You might not be able to get everything, but if you get 80% the way there, you're fine."

◆ **Next up: beneficiaries.** Beneficiary designations should be reviewed and changed. Many people have multiple bank and brokerage accounts, insurance policies, retirement accounts and annuities that name beneficiaries or individuals to whom owner-

ship will transfer at death. It isn't uncommon for some of these accounts and policies to be overlooked or long-forgotten.

The proceeds of these accounts and policies pass directly to the named individuals regardless of what a will says. The money could be long gone by the time family members find out about it.

In 2013, the U.S. Supreme Court sided with the ex-wife of a man who died in 2008, leaving a \$124,558 life-insurance policy to her rather than his then-current wife. He didn't change the beneficiary after his divorce from his first wife.

Beneficiaries have to be changed in writing by filling out a new form and sending it to the financial institution handling the account or policy.

Lawyers advise people to make a careful inventory of their records so they don't accidentally miss an account.

◆ **When ties do bind.** In some divorces, the financial agreements call for an ex-spouse to remain a beneficiary of a retirement account or insurance policy—and that beneficiary may want to take steps to clarify the arrangements.

The decision can be reinforced by filling out new beneficiary paperwork after the divorce to make the intention clear, lawyers say. Get a written confirmation from an insurance company that they have received your beneficiary changes, lawyers advise.

Individual-retirement-account money can be divided and rolled over into separate accounts by sending a letter to the plan administrator with proof of the divorce, Ms. Schmidt says. Qualified retirement plans, however, such as company-sponsored ones, take a little more planning.

The ex-spouse should get a court order called a Qualified Domestic Relations Order that gives him or her the right to a portion of the other's 401(k) or other qualified-plan assets, as set out in their divorce settlement.