Divorcing? Revise your estate plan

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If you're going through a divorce, you probably feel a little overwhelmed by all the legal and financial items you must attend to before the marriage termination is final. These tasks can be difficult, but revising your estate plan doesn't have to be.

What the law says

Divorce generally extinguishes your spouse's rights under your will or any trusts. So there's little danger that your ex-spouse will inherit your property listed in those documents outright, even if they haven't been revised yet. If you have minor children, however, your ex-spouse might have more control over your wealth than you'd like.

Generally, property inherited by minors is held by custodians until they reach the age of majority (age 18 in most states, but in some states age 21). A surviving parent may act as custodian, giving him or her considerable discretion in determining how your assets are invested and spent while the children are minors. However, you can avoid this result by creating a trust (or trusts) for the benefit of your children.

You establish the terms

With a trust, you can appoint the person who'll be responsible for managing assets and making distributions to your children. You can also decide when and under what circumstances your children will receive your property.

In addition, trusts can be beneficial when adult children inherit assets. They can be designed to shield assets from your children's ex-spouses, should they divorce. However, if your children have too much control over a trust, a court may view its assets as marital property subject to division in divorce. For greater protection, give your trustee full discretionary authority over distributions.

Trust solutions

There are several types of trusts that might be useful in your situation. For example, a revocable living trust allows you to arrange for the transfer of selected assets to designated beneficiaries. This trust type typically is exempt from the probate process and is often used to complement a will.

For its part, a credit shelter trust typically is used to maximize estate tax benefits when you have children from a prior marriage and you also want to provide financial security for a new spouse. A qualified terminable interest property ("QTIP") trust can help you achieve some of the same goals. The surviving spouse receives income from the QTIP trust while beneficiaries — typically, children from a first marriage — are entitled to the remainder when the surviving spouse dies.

Finally, an irrevocable life insurance trust ("ILIT") can help you remove life insurance policies from your taxable estate. If you transfer policy ownership to the ILIT, your family may use part of the proceeds to pay estate costs.

Possibility of remarriage

If you eventually remarry, you'll need to revise your will and trusts again. Otherwise, a substantial portion of your estate could go to your children (under your ex-spouse's control, if they're minors). We can help you update documents and ensure that your children benefit according to your wishes — not your ex-spouse's.

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