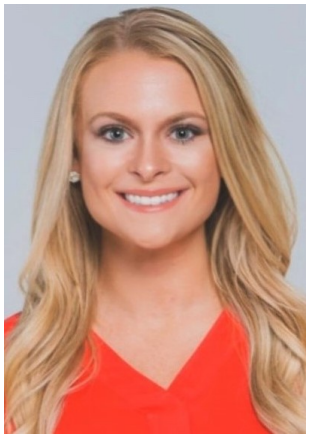

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Divorce and Estate Planning

RAYMOND JAMES®

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How does divorce affect estate planning?

Wills for both spouses are often drawn up sometime during the marriage--particularly if there are children involved. When divorce is contemplated, the selection of beneficiaries and executors will likely be revised to reflect the absence of your former spouse. Additionally, you will need to re-examine the gift and estate tax aspects of your estate plan. For these reasons, many divorcing couples revise their estate planning documents during the period of separation or soon after the divorce has been finalized.

What should you be concerned about during the separation period?

If divorce proceedings have begun, it's important to draft a formal separation agreement as soon as possible, establishing the spouses' rights regarding property, debts, temporary alimony, child support, and child custody. When drafting the provisions, you (or your attorney) will want to consider the possibility of your spouse dying prior to entry of the final divorce decree. You may wish to make the agreement binding on heirs and assigns so that the obligations will continue if one party dies.

If you expect to receive alimony and child support from your spouse, you may want to require (in the separation agreement) that your spouse buy a life insurance policy (or keep the existing one in force), naming you as the beneficiary. The policy should be in an amount sufficient to cover the sum of support obligations and property distribution payments contemplated. You could even be named as the owner of the policy insuring your spouse's life.

Similarly, your agreement might require your spouse to maintain minimum will provisions in favor of you (and/or your children). Often, the parties to a separation agreement include a provision that both waive the right to elect a share of the estate of the other in the event that one party dies before the divorce decree is entered.

When revising your estate plan, which areas require particular note?

First of all, you should make the necessary changes in your will or other estate planning documents to ensure that your former spouse isn't named as your personal representative, successor trustee, beneficiary, or holder of the power of attorney. A new will will likely be drafted during the separation period. Note that in some states, wills drawn up during a marriage are considered void after a divorce unless specifically ratified after the divorce. This means that intestacy rules would apply, instead of the will being controlling.

Next, consider gift tax implications if funding your children's education is required by your property settlement. Although your direct tuition payments (even for adult children) are exempt from gift tax when required by a property settlement agreement, be aware that your payments for related educational expenses (e.g., books and room and board) may be subject to gift tax.

Example(s): *Liz and Frank have a daughter, Carol. Carol has reached the age of majority under state law. When the couple divorced, Frank agreed (as part of the settlement) to pay for Carol's college tuition, books, room, and board. During the year, Frank pays $20,000 tuition directly to Carol's university, and he gives Carol $15,000 in cash for living expenses. The tuition isn't a taxable gift, but the $15,000 in cash will be treated as a taxable gift.*

Finally, consider the absence of the unlimited marital deduction . A deduction is allowed for qualifying transfers to one's spouse during lifetime or at death. Because this gift and estate tax deduction is one of the most important estate planning tools for married couples, your loss of this tool at divorce can affect your tax situation adversely when you die.

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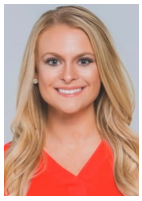

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