

ALBUQUERQUE DIVORCE LAWYER BLOG

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Failure to Address Estate and Insurance Beneficiaries in Divorce can Lead to Unintended Asset Distributions

The divorce process is a time of stress, disruption and change. With the multitude of decisions that must be made, estate plans, insurance instruments and retirement accounts created during the marriage can get overlooked. As such, ex-spouses can unwittingly remain as recipients or beneficiaries of estate assets, even when it is not intended. They can also be deemed decision-makers in certain inopportune situations.

Prior to any thought of divorce, spouses are commonly named as beneficiaries for estate assets. Because New Mexico is a community property state, each spouse owns 50% interest in the assets acquired during the marriage upon divorce. Each spouse then has the right to say how their 50% is used, including to whom they will leave their separate assets upon death.

Beneficiary designations are often overlooked during a divorce. It may be only during probate proceedings that an ex-spouse is found recorded as an estate beneficiary. This creates obvious problems for the deceased's intended recipients. Likewise, there are difficulties when an ex-spouse is left as a beneficiary on a life insurance policy, pension plan, annuity or trust account.

Worse still is a situation where a person has been incapacitated due to injury or illness and they neglected to remove their ex-spouse as the agent on their living will or advance health-care directive. These are documents that give another party the legal ability to make medical decisions, including the refusal of treatment. If the person is incapacitated, transferring that decision-making authority can be quite difficult.

Particularly after a contentious divorce, one need only imagine the unintended consequences of neglecting to change beneficiary designations. An experienced divorce attorney can help address these issues to avoid the consequences of unintended beneficiaries.

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Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquedivorcelawyerblog.com/>