



THE LAW OFFICES OF
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FAMILY WEALTH & LEGACY COUNSELLORS

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Divorce and Beneficiary Designation Forms - Who Wins?

Due to changes in your life, changes in the law, changes in your lawyer, and changes in your legacy, here at Hoyt & Bryan we believe it is very important to review and update your estate planning on a regular basis. This means not only making sure your last will or revocable trust is up-to-date but also that your asset ownership is consistent with your estate planning goals. Regular asset ownership review is critical for everyone but it is especially important for those who are going through or have gone through a divorce.

In Florida, the law is clear about what happens if you pass away with a last will or a revocable trust where your former spouse is named as a beneficiary. In 1951, Florida enacted a statute automatically cutting divorced spouses out of each other's wills. The current statute is F.S. §732.507(2). So, under the law, even if you get divorced and then pass away prior to updating your planning to remove your former spouse as a beneficiary under your will, your will is to be read as if your former spouse predeceased you. In 1989, Florida enacted a similar statute for revocable trusts, F.S. §736.1105.

But, what happens if a former spouse is named as primary beneficiary on a decedent's retirement plan, 401k, life insurance, etc.? Traditionally, Florida courts have applied classic contract interpretation rules to beneficiary designated assets. This means if a former spouse is identified as the designated beneficiary the former spouse receives the asset regardless of their current marital status. So, even if you have been divorced for many years and even if you have remarried, if you fail to update your beneficiary designations removing your former spouse as beneficiary, your former spouse will still be the beneficiary of that asset.

In 2009, a Florida court broke with tradition and ruled in favor of a post-divorce automatic revocation rule for beneficiary designated assets based on the facts of the case. Ultimately, the Florida Supreme Court stepped in and, in June of this year, reversed the lower Court's decision. The Supreme Court reconfirmed the rule in Florida related to former spouses. Therefore, if you are divorced but your beneficiary designation form still identifies your former spouse as your beneficiary, your former spouse will inherit that asset when you pass away.

It is extremely important to review your beneficiary designations. It is also critical not to forget plans provided through work, including life insurance through an employer. These changes are crucial to having an estate plan in place that works the way you intend for it to work.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved

ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration, Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders, Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.