

HEADLINER: Where There's a Will There's a Way**ARTICLE TITLE: Life Events – Among them Separation & Divorce**

A difficult time under any circumstances, separation and divorce are rife evidence of the instability at hand. Estate planning attorneys advise clients to review their estate plans for necessary revisions upon the experience of a variety of “life events” and the process of separation and divorce factor in those.

In fact, this imposes two important milestones: you want to take stock of your estate plan during the divorce proceeding or separation, and after your divorce settlement. You have the ability to amend or revoke your estate plan documents at any time. Notes of caution to consider during a divorce involve the asset restraining order in place during every divorce. This may limit your ability to change the nature of assets held by a trust during the divorce.

Once the divorce is settled, Oregon law revokes provisions in the estate plan that favor the ex-spouse as beneficiary or personal representative. However, because during the divorce those provisions remain effective, you may consider amending those provisions during the divorce proceedings. Be certain to consider your pre-nuptial agreement, if one exists, such that any changes you make to your estate plan are aligned with its terms. As well, during and after the divorce settlement you will want to consider the appointments you have made in your Healthcare Power of Attorney, your Advance Directive, and your Durable Power of Attorney.

Keep in mind as you consider the legal effects of a separation or divorce on your estate plan the “spousal elective share”. This law seeks to provide a measure of financial protection to a surviving spouse, saving them from financial destitution. The elective share provides that a surviving spouse may make a claim on the assets of the deceased spouse regardless if the spouse was left out as a beneficiary or disinherited. Ex-spouses may also make a claim which the court will consider conditional to a number of criteria in determining whether and to what extent to authorize such a claim.

Stories of the Stars ... If Only

A battle raging in Manhattan ... Ric Ocasek - lead singer of The Cars, at age 45 married Sport Illustrated swimsuit model Paulina Porizkova, age 24, in 1989. A marriage many thought would be short-lived given their twenty-year disparity in age lasted 30 years. When Ocasek passed away, September 15, 2019, they were in the midst of divorce proceedings since May 2018. As a result, upon Ocasek's death, they would be considered still married which ordinarily would have accorded Porizkova certain rights to the estate as spouse. However, weeks before he died, Ocasek took steps to cut off Porizkova's rights by redoing his will, appointing a new personal representative (aka executor), disinheriting Porizkova and taking extra steps to also eliminate her right to the elective share by stating in the will that even if he died before the divorce was finalized, Porizkova had “abandoned” him and therefore should not have a rightful claim to an elective share. Although a disinherited spouse generally still has a right to claim an elective share, the court may deny such a claim upon finding that the spouse abandoned the decedent.

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Dear Reader ... We welcome your questions on matters related to estate planning. These will provide grist for future articles and enhance the potential for those articles to be of interest and value to you.

Please submit your questions to Garth Guibord, at garth@mountaintimesoregon.com.



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