

# ELDER LAW REVIEW

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In 1996, a husband and wife in Texas prepared their Wills with a local attorney. Each named the other as primary beneficiary and executor of their respective estates. The husband's father was named as alternative beneficiary and executor under both Wills. In 2007, the marriage ended without issue (children) and the ex-wife moved to New York. In 2010, the ex-wife passed away; presumably, intestate after it appeared that no Will could be found. The 1996 Will eventually emerged and while both Texas and New York law disqualified the ex-husband from inheriting or acting as executor; the same was not true of the ex-father in law. Under New York law, the former father-in-law was not automatically disqualified by the divorce decree. The result is a court case that continues even at this late date to determine the validity of the Will. This could have been avoided. *Matter of Lewis*, No.64, N.Y. slip op. 04674 (N.Y.Ct. App. June 4, 2015).

While many states have statutes designed to prevent a former spouse and their family from inheriting, there are things that you can do to avoid a conflict (and possibly Court!) altogether.

## 1. Update your disability documents.

You and your former spouse may have parted amicably, but do you want them to make the decisions for you if you are alive, but unable to do so yourself? Regardless of whether you answer yes or no to this question, you will want to execute new disability documents (Powers of Attorney and Health Care Directives).

## 2. Update your estate planning documents.

Post-divorce you will want to re-evaluate who should act as your personal representative (also known as executor), as well as who should be the beneficiaries of your estate. You may wish to provide for your former stepchildren and their descendants in your estate plan. Re-execution of your Will following the final divorce decree will ensure that your wishes are enforced even after a

divorce. Remember that if you do not have a valid Will in place, the state and ultimately the court will determine who is allowed to inherit with blood relatives heading the list.

## 3. Update beneficiary designations.

Post-divorce you will want to update the beneficiary designations on all assets. In most cases a divorce decree will nullify the former spouse as beneficiary; however, updating the designations will ensure that your assets transfer to the individuals that you intended. Make sure that you update retirement plans, bank accounts, life insurance (if not specified in the divorce decree) and other types of non-probate assets.

## 4. Appoint a guardian to control inheritances left to minor children.

If you have minor children, unless you designate who will be a guardian and trustee, the court is likely to appoint the other parent as the person making their decisions of well-being (guardian) and the person managing financial decisions (Trustee).

These simple steps can help ensure that your wishes are followed. Meet with an estate planning attorney to make sure that your documents are in order whenever you experience a major life change.

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