

WILLS, TRUSTS & LIFE INSURANCE AFTER A DIVORCE

Laws Vary by State and can Change at Any Time BY GARY ALTMAN, ESQ. & ADAM ABRAMOWITZ, ESQ.

Maryland

Will By Statute, upon divorce “all provisions in the Will relating to the spouse, and only those provisions, shall be revoked unless otherwise provided in the will or decree.” Md. ESTATES AND TRUSTS Code Ann. § 4-105. This is automatic and requires no further action by the testator.

Revocable Trust Unlike a Will, a Trust distribution to a former spouse survives divorce. A distribution to a former spouse must be actively changed in Trust documents.

Life Insurance In Maryland, like the majority of jurisdictions, upon divorce, the ex-spouse listed as beneficiary does not automatically waive their right to claim the insurance benefit if the beneficiary is not changed. See *East v. PaineWebber, Inc.*, 131 Md. App. 302, 311 (Md. Ct. Spec. App. 2000). The only exception is if the Divorce Decree specifically revokes the right to inherit life insurance.

Washington, DC

By Statute and Case law, DC recognizes the concept of implied revocation whereby a final divorce decree implies ones intent to remove their ex-spouse from their Will. See D.C. Code § 18-109 (2011).

A Trust distribution to a former spouse is not automatically revoked upon divorce. The Grantor of the Trust must either amend the Trust, revoke the Trust, or the Divorce Decree or subsequent contract must manifest “clear and convincing evidence of the settlor’s intent” to remove the former spouse as beneficiary. D.C. Code § 19-1306.02.

In DC, once a spouse is designated as a life insurance beneficiary, they are deemed to have a vested interest. Therefore, upon divorce, a former spouse is not automatically divested of that interest, unless, there is convincing evidence that the Divorce Decree was intended to deprive the named beneficiary of that interest. See *Mayberry v. Kathan*, 98 U.S. App. D.C. at 55.

Virginia

By Statute, “the divorce or annulment revokes any disposition or appointment of property made by the Will to the former spouse.” Va. Code Annotated § 64.1-59. This is automatic and requires no further action by the testator.

Unlike life insurance (below), Va. Code Ann. § 20-111.1 does not apply automatic revocation to dispositions to a former spouse. In fact, it specifically states that such revocation shall not apply to Trusts. Therefore, a Revocable Trust must be amended to remove the former spouse as beneficiary.

Virginia holds that, upon divorce, “any revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked.” Therefore, upon divorce, the ex-spouse loses their right to inherit any life insurance proceeds on their former spouse. See Va. Code Ann. § 20-111.1.

ALTMAN & ASSOCIATES

ROCKVILLE One Central Plaza, 11300 Rockville Pike, Suite 708

COLUMBIA 30 Corporate Center, 10440 Little Patuxent Parkway, Third Floor

301.468.3220 TEL • 301.468.3255 FAX

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