



Effects of Termination of a Marriage on an Estate Plan

By Roger Whitaker of Luper, Neidenthal & Morgan. Reprinted with permission.

The prevalence of divorce and dissolution is widely reported in the press. Estimates are that at least 40% of first marriages end in divorce or dissolution while the percentage of second and third marriages terminated by court decree is even higher. What is the effect of a decree terminating a marriage on an existing estate plan? What will happen if one of the former spouses dies after the end of a marriage without changing his or her will or trust?

Under Ohio law, a court decree ending a marriage and, in some cases the execution of a separation agreement, will revoke instruments under which property would otherwise pass to an ex-spouse. Not all estate planning related documents will be treated as having been revoked or terminated by a decree so a review of all estate planning documents is still advisable. The effects of the termination of marriage on typical estate planning documents is summarized in the remainder of this article.

Wills.

Ohio law provides that the entry of a decree of divorce, dissolution or annulment, or, if the parties actually separate, the execu-

tion of a separation agreement intended to fully and finally settle the prospective property rights of the parties will revoke all bequests to an ex-spouse contained in a will, unless the will specifically provides that the bequests to the spouse survive the termination of the marriage. Any appointment of the spouse as executor, trustee or guardian is also revoked. Property which would have passed to the ex-spouse will pass to the contingent beneficiaries as if the ex-spouse had died before the decedent.

Revocable Trusts.

A former spouse is treated as having predeceased the grantor of a revocable trust and property will pass to the alternate beneficiaries when the grantor and his or her spouse are divorced, or a separation agreement of the type described in the discussion on wills is executed. Any appointment of the ex-spouse as trustee is revoked as is any power of appointment granted to the spouse in the trust.

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Hamilton County Law Library

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What is Fastcase? It's a search engine like Lexis or Westlaw but without annotations. It's comes with your Law Library Subscription! You can access it in the convenience of your office!

By: Julie Koehne

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We will be offering training for Fastcase at our facility this summer.

Introduction to Fastcase 6/4 3:30—4:30 p.m.

Fastcase Legal Research for Paralegals 7/3 10—11 a.m.

Tips for Enhanced Legal Research with Fastcase 8/8 1—2 p.m.

Keyword (Boolean) Search for Lawyers 8/27 1—2 p.m.

We are unable to offer CLE credit.

Go Green and Get the News First!

Are you currently receiving the HCLL newsletter in print? Would you prefer an online version? HCLL subscribers who opt for the online version receive it before the print copy is mailed, plus the links for email and websites are active. We send out a summary via email each month with a link to the full text. To switch from print to online, just email

reference@cms.hamilton-co.org with a request to switch formats.



March 1: Revocation of Privileges for Unpaid Subscriptions

We have some subscribers whose library privileges are revoked, effective March 1, for nonpayment of 2012 subscriber fees. We don't want to lose you, but we've got to take that step. It's easy to remedy, though: Just pay your 2012 subscriber fees and we'll reinstate all your privileges. Call Mary Ann Sweeney at 513.946.5300 if you need more information.

Free Spring CLEs

Due to increased attendance, registration in advance is now required for all Law Library CLEs.

To register, call 946-5300 or via email at masweeney@cms.hamilton-co.org.

Lexis

Tuesday, March 20, 2012

1:00pm-2:00pm

Case Law Searching & Shepard's
Approved for 1.0 hour of general Ohio CLE credit.

Free to library subscribers, \$35 for non-subscribers.

Westlaw

Tuesday, April 3, 2012

Noon-1pm

Westlaw Search Tips & Tricks
Approved for 1.0 hour of general Ohio CLE credit.

Free to library subscribers, \$35 for non-subscribers.

Researching Private Companies

Thursday, May 17th, 2012

2:00 - 3:00 pm

Presented by Shannon Kemen of UC
Pending :: 1.0 hour of general CLE in Ohio and Kentucky

Free to subscribers; \$35 for non-subscribers.

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Powers of Attorney.

The designation of a spouse as an attorney-in-fact in a power of attorney is revoked under the same circumstances which cause a will or revocable trust to be treated as having been revoked and the former spouse will have no authority to act under the power of attorney unless the instrument provides that the appointment survives the termination of the marriage. The statute governing durable powers of attorney for health care does not specifically deal with the issue of divorce. However, the general statute which states that a power of attorney is revoked by divorce appears to be broad enough to include health care powers of attorney. Many commonly held assets pass outside of a will or trust and are governed by beneficiary designation or the form of ownership. Most of these arrangements are also affected by the termination of a marriage by divorce or dissolution but not by the execution of a separation agreement even with actual separation.

Survivorship Deeds.

Many married couples own their residences as joint tenants with rights of survivorship so that the property will pass to the survivor of them without reference to a will or action of the Probate Court. Divorce causes the survivorship tenancy to convert to a tenancy in common which means that each owner has an undivided one-half interest in the property which will pass via the deceased's estate plan and not automatically to the other owner. This result can be overridden and the survivorship tenancy maintained by the decree which terminates the marriage.

Joint Financial Accounts.

Bank accounts and investment accounts are frequently held by spouses jointly with rights of survivorship. Upon the termination of a marriage, unless the decree provides otherwise, the survivorship rights in such accounts terminate and each party will own an undivided interest in the property held in the account in proportion to the spouse's net contributions to the account. Other personal prop-

erty, such as automobiles, held with survivorship rights is treated in the same manner.

Beneficiary Designations.

With two important exceptions, beneficiary designations naming a former spouse as the beneficiary of life insurance, IRAs, annuity contracts and payable on death accounts (POD) are revoked by a divorce or dissolution. The exceptions are: (1) A life insurance beneficiary designation signed before May 31, 1990 is not revoked and will still be valid, and (2) benefits under a plan subject to ERISA, such as an employer sponsored pension plan and employer provided life insurance, are not governed by Ohio law. The U.S. Supreme Court has held that ERISA plan benefits must be paid to the beneficiary named in the plan documents, even if that beneficiary is no longer married to the plan participant. Federal law, not State law, governs such plans.

Transfer on Death ("TOD").

Ohio law permits the owner of real property to record an affidavit designating a beneficiary to receive his or her interest in the real estate at the death of the record owner. (Prior to December 28, 2009 this was done by filing a transfer on death deed.) Both the current and former statutes are silent about the effect of divorce on the designation of a former spouse as a TOD beneficiary and it is not clear that the provisions of the statute discussed under the beneficiary designation topic of this article applies to TOD designations.

This summary is based on Ohio law. The laws of other states may differ and may apply if after a divorce a party relocates to another state and does not review the estate plan. If you or a family member experience the termination of a marriage it is important to carefully review all aspects of your estate plan to make sure that it reflects your current goals and to avoid unintended results.

For more info, contact Roger Whitaker at rwhitaker@lntorneys.com

Finding Ohio Forms

One of the most common questions we get at the Law Library is “Do you have a form for.....?”

Check out this list of form resources available here the Law Library.

Form Books:

Am Jur Forms
 Anderson’s Ohio Civil Practice
 Baldwin’s Ohio Civil Practice
 Couse’s Ohio Forms
 Katz & Giannelli Criminal Law
 Merrick-Rippner Probate Law
 Ohio Annotated Business Entities
 Ohio Domestic Relations Practice Manual
 Ohio DUI Law
 Ohio Estate Planning: Wills and Trusts Library
 Ohio Forms of Pleading and Practice
 Ohio Forms and Transactions
 Ohio Landlord Tenant Law
 Ohio Limited Liability Companies: Forms and Practice Manual
 Ohio Probate Practice and Procedure
 Ohio Real Property Law and Practice
 Ohio Search Warrant Manual
 Ohio Transaction Guide
 West Federal Procedural Forms
 West Legal Forms

Online Resources:

Most of the form books mentioned above are also available online through Lexis and West. In addition we have several other online form resources:

West Formfinder-Formfinder allows you to search for forms by key words or topics. You can limit forms by litigation/transactional, civil /criminal and by jurisdiction. (In Library access only.)

Aspen/LoisLaw-Library subscribers can access Aspen/Loislaw remotely through our website. Forms and checklists are available in the following treatise libraries:

Bankruptcy Law
 Business Practice Law
 Construction Law
 Elder Law
 Employment Discrimination Law

Employment Law
 Estate Planning
 Evidence
 Family Law
 General Litigation
 Internet and E-Commerce Law
 Personal Injury
 Product Liability
 Real Estate

EBSCO Legal Information Reference

Center-From the publishers of the NOLO guides, EBSCO is another resource that subscribers can access from home. The EBSCO library offers forms for topics such as:

Accident Claims
 Bankruptcy
 Real Estate
 Consulting & Contracting
 Divorce
 Green Cards
 Human Resources
 Living Trusts
 Patents
 Personal Injury
 Wills

Hamilton County Forms:

Common Pleas:

http://www.hamilton-co.org/common_pleas/common_%20pleas_forms.htm

Domestic Relations Forms:

<http://www.hamilton-co.org/domestic/FormsProcedures/Forms.html>

Juvenile Forms:

http://www.hamilton-co.org/juvenilecourt/FormsHome/forms_home.asp

Probate Forms:

<http://www.probatect.org/services/index.htm>

First District Court of Appeals:

<http://www.hamilton-co.org/appealscourt/forms.asp>

Sixth Circuit Court of Appeals:

<http://www.ca6.uscourts.gov/internet/forms/forms.htm>

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

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Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: Same Sex Legal Issues

Scott Knox is our next speaker in the *You and the Legal System Series* for the public. Mr. Knox will address Same Sex Legal Issues on Friday, March 16, 2012 at 12:00 noon at the Law Library. The program will focus on:

- powers of attorney
- trusts
- protections for children of same-sex or unmarried partners

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513-946-5302.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

Save the date for the next event in the You and the Legal System Series: Lance Cox will present on Taxes on April 20. Details Forthcoming.

HCLL LinkedIn Group

The Hamilton County Law Library now has a LinkedIn group Check it out!

http://www.linkedin.com/groups/Hamilton-County-Law-Library-OHIO-4266465?home=&gid=4266465&trk=anet_ug_hm

Estate Planning Resources

Law Library patrons have access to a variety of resources on estate planning. If you would like to use one of the resources listed, just call and we'll hold it for you. If you have questions about access to the Law Library's online resources, just ask a librarian for guidance.

Books

American Bar Association Guide to Wills & Estates: Everything You Need to Know About Wills, Trusts, Estates, & Taxes
KF750.Z9 A47 2009

Baldwin's Kentucky Wills & Trusts/L. Rush Hunt and Lara Rae Hunt
KF730.Z9 B74 2009

Best Practices for Structuring Trusts & Estates: Leading Lawyers on Protecting Assets, Meeting the Needs of Today's Clients, and Understanding the Impact of Recent Federal Estate Tax Issues
KF730.Z9 B74 2010

Creating a Trust-What You Need to Know
KF730. Z9 C74 2008

Drafting Wills and Trust Agreements/Michael L.M. Jordan
KF748.1 J66 2011

Drafting Wills and Trusts (In Ohio)
KFO144.D7 2011

Estate Planning Basics/Dennis Clifford
KF750.Z9 C585 2011

Estate Planning for Same Sex Couples/Joan A. Burda
KF750 B87 2004

Multistate and Multinational Estate Planning/
Jeffrey A. Schoenblum

KF750.S34 2009

Ohio Estate Will and Trusts Library; Forms and Practice Manual/Edward M. Segelken, Lori-Lou Kim
KFO140.A65 S44 2011

Page on Wills/Jeffrey A. Schoenblum
KF755.P34 2011

Top 7 Estate Planning Techniques in Ohio
KFO.Z9 2009

Online Resources

*Aspen/Loislaw:

Estate Planning Library:

Forms and Checklists

Multistate Guide to Estate Planning

Practical Guide to Estate Planning

Price on Contemporary Estate Planning

Estate and Gift Tax Handbook

Estate and Retirement Planning Answer Book

BNA:

Estates Gifts & Trusts Portfolios

Estates, Gifts & Trusts Journal

CCH:

Federal Estate and Gift Tax Reporter

State Inheritance and Gift Tax Reporter

Estate Planning & Drafting (Includes Tax Rate Tables)

Financial and Estate Planning Practice

Tools (Includes charts and IRS Comparison Calculator)

*Aspen/Loislaw resources can be accessed remotely by library subscribers.

Upcoming Events

March 16: You and the Legal System: Same Sex Legal Issues

March 20: Lexis CLE: Case Law Research & Shepard's

April 3: West CLE: Search Tips

April 20: You & the Legal System: Taxes



March 2012 Law Library Newsletter

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