

The Revocatory Effect of Divorce on a Testamentary Disposition or Appointment

When you get divorced it is extremely important to review your estate planning documents. If you don't, you could wind up leaving all your assets to your former in-laws.

A divorce decree automatically removes the former spouse from the Will as both a distributee and as an executor. But the divorce does not automatically remove the former spouse's family from the Will.

Under New York law, except as provided by the express terms of a will, a divorce or annulment of marriage revokes any testamentary distributions or appointments to former spouses. The former spouse is treated as having predeceased the divorced individual as of the time of the revocation (See EPTL 5-1.4(a), (b)). New York law further provides that the provisions of EPTL 5-1.4 only apply to former spouses, not to members of the former spouse's family.

In re Estate of Lewis, (114 A.D.3d 203, 4th Dept. 2014), the decedent executed a Will while she was still married to her ex-husband. Pursuant to her Will, her ex-husband was named as the executor and sole beneficiary of her estate. In addition, in the event that her ex-husband predeceased her, her ex-husband's father was named as the successor executor and successor sole beneficiary of the estate. The decedent and ex-husband were divorced and when the decedent passed away, her ex-husband's father petitioned the Surrogate's court to be appointed as the executor and take under the will as the sole beneficiary. The decedent's parents filed objections to probate, but they were dismissed by the Surrogate.

The Appellate Division of the Supreme Court of the State of New York, Fourth Department, held that the testamentary disposition and appointment as executor made to the ex-husband in the decedent's Will were revoked by virtue of the divorce. Once the decedent and ex-husband were divorced, the ex-husband was treated as having predeceased the decedent. However, since EPTL 5-1.4 only applies to the former spouse, not to the members of the former

spouse's family, the ex-husband's revocation did not apply or extend to the disposition and appointment made to her ex-husband's father.

As you can see, it is extremely important to keep your estate plans updated, especially after a divorce. Consulting with an experienced estate planning attorney to review and analyze your specific situation is crucial to making sure that your true wishes will be reflected in your estate plan.