

While you were married, you prepared a Will naming your spouse as your beneficiary. Now your divorce has been finalized. You should probably do a new Will. But what happens if you don't?

Estates, Powers, and Trust Law (EPTL) §5-1.4 provides the answer:

Under the statute, a divorce or annulment revokes any revocable “disposition or appointment of property made by a divorced individual to, or for the benefit of, the former spouse.” This includes a disposition or appointment to that former spouse made in your Will, by beneficiary designation, or by revocable trust. The statute acts to revoke “in trust for” and “pay on death” designations on bank and brokerage account. This means that upon a divorce, the statute writes your spouse out of your Will, out of your revocable trust and removes his or her name from any “in trust for” or “pay on death” bank accounts.

The divorce or annulment also automatically revokes any revocable provision conferring a power of appointment on the former spouse. If your former spouse was appointed or nominated by you to serve in a revocable fiduciary or representative capacity, such as nomination of the former spouse as an executor, trustee, guardian, agent, or attorney-in-fact, that appointment or nomination is also nullified by the end of your marriage. However, after your divorce, your financial institutions and financial advisers should be given notice of your intent to revoke any such powers you granted your former spouse, since they will not held legally responsible if they act against your wishes unless the proper notice is given.

Finally, if you own property with your former spouse, the divorce or annulment acts to sever joint tenancies between former spouses (including joint bank accounts). This means that it automatically transforms them into tenancies in common, meaning post-divorce you will each own one-half (1/2) of the asset.

Does this protection mean you should do nothing with respect to estate planning after you are divorced? The answer is no. After you are divorced, you should consult an estate planning attorney such as Joseph A. Marra so you can revise the disposition of your assets as you see fit, to better serve the new circumstances of your life.