DIVORCE AND ESTATE PLANNING IN NEW HAMPSHIRE AND MASSACHUSETTS

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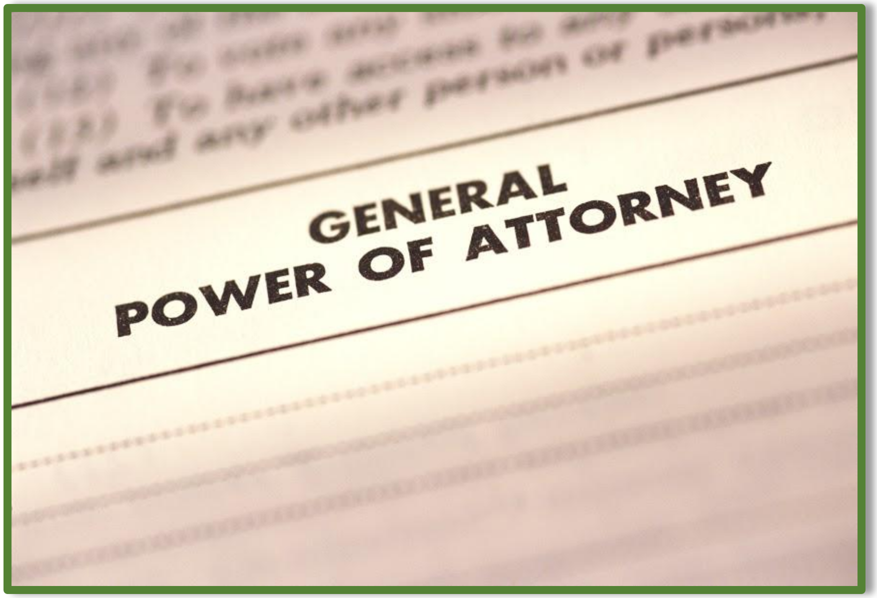
DANIEL A. DEBRUYCKERE
NEW HAMPSHIRE ESTATE PLANNING ATTORNEY

Here's an interesting and frankly, an alarming statistic: divorce rates of those over the age of 50 more than doubled between 1990 and 2010. One in 25 couples in this age group will divorce; compared to one in ten in years past. It's staggering. This presents an interesting quagmire: what will your estate planning efforts (and your bank account) look like after the divorce? There are many considerations you'll have to address and reconcile both before and after the judge drops the gavel. Divorce and estate planning – two things most people never realize they'd be doing simultaneously. Some say it's the number of baby boomers driving this trend; others say divorce isn't nearly as stigmatized as it was early in their marriage and still others say they now no longer worry about societal factors.

DIVORCE AND ESTATE PLANNING: A SLOW DANCE

The first thing you'll want to do is take an inventory of what you've already put into place regarding your estate planning efforts and your finances.



- Joint bank accounts
- Your home's title
- Living trusts
- Powers of attorney (Financial, Medical)
- Wills
- Life insurance
- Retirement accounts (and the beneficiaries on those accounts)

There does seem to a common theme from many divorces: discerning marital property from separate property. For instance, you might have bought a home before you met your husband. After you married, he moved in, and years later, you opted to take out a HELOC to make some home improvements. If his name is on the title, it's now deemed marital property in most instances.

Time matters – some of these protective mechanisms can be put into place as the divorce is unfolding; other tasks you won't be able to complete until you have a finalized divorce decree. Your attorney can provide the right guidance so that everything is fluid as you move through the process.

IRREVOCABLE TRUSTS

In recent times, we've seen a move towards using irrevocable family trusts, both as a way to bypass the awkward prenuptial agreement and as a way to protect some assets, such as a family home. The trust owns the home, versus the husband and/or wife. This is a great solution for some, but it may not be right for every situation. Your legal advocate can provide further guidance.

The divorce does not automatically void designations on insurance policies, retirement accounts and more. In most instances, it only terminates a spouse's right to inherit from certain sources, such as from an ex-spouse's estate if there was no will.

THE MOTHER IN LAW (OR FATHER IN LAW)

This is often an overlooked detail in divorce proceedings:

Any assets left to your spouse in your estate plan could still fair game, so if you don't want to risk having your great grandmother's diamond ring go to your ex-spouse, be sure to change it in your will. For that matter, let's say your mother has left the ring to her soon-to-be former daughter in law. She understandably doesn't want the heirloom to go to someone who's no longer going to be part of the family; you'll likely want to encourage her to make changes in her own will. If a person dies after the divorce without changing beneficiaries or amending a will, the former spouse could wind up with everything – even from a former in-law.

Are you and your spouse one another's decision maker in a medical power of attorney? The divorce doesn't change that either. If you want to name someone else to make the decisions for your healthcare if you're unable to do so, it really should be a priority.

Also, and this is important, what works with one couple may not be the ideal solution for another. So many times, a client says she would like a resolution similar to her best friend, sister, neighbor, etc. It's typically impossible; finances, estate plans, final divorce decrees, etc. are as unique as the people behind the paperwork.

DIVORCE BEFORE ESTATE PLANNING

If you haven't begun your estate planning, it now takes on new meaning as you're going through or have completed your divorce. This is especially true if there are minor children. Again, there are guardianship considerations and many will add their children as beneficiaries for various accounts and as such, that means another adult will be overseeing those assets they inherit until they're legally an adult. Choose wisely.

The reality is divorce and estate planning are two things no one really looks forward to doing. Who wants to face a marriage that didn't work out? No one likes to address their mortality, either. Both can be emotionally draining and together, it can quickly become overwhelming. The right legal guidance, however, can make all the difference. The peace of mind that comes with knowing you've moved through both processes, even as they've intertwined, is quite powerful. It lets you know you can now move forward with fewer worries about the past.

About the Author

Daniel A. DeBruyckere

Attorney DeBruyckere approaches each challenge not just with solid expertise, but also with a passion for helping others plan well for the future. As a husband with three children and two grandchildren, it's his own family experience that provides the motivation to ensure all of his clients are well protected. Besides his extensive background in the issues he specializes in, Dan's clients find that he genuinely cares about them, and that he pays attention to the details that matter to each person and their families.

EXPERIENCE

Attorney Daniel A. DeBruyckere has been practicing law in New Hampshire and Massachusetts since 1998, and has helped hundreds of clients with their estate planning and elder care isssues. He is very well respected in the area of estate planning, probate, trust administration, elder law issues, and business planning.

Admitted in Massachusetts and New Hampshire, Attorney DeBruyckere is a former adjunct faculty member of the Massachusetts School of Law and is a member and past president of the Greater Salem Bar Association. He is also a member of the Essex County Bar Association, Massachusetts Bar Association, New Hampshire Bar Association, as well as a member of the National Association of Elder Law Attorneys.

EDUCATION

Attorney DeBruyckere is a graduate of Southern New Hampshire University, summa cum laude, and Massachusetts School of Law, cum laude. He served as editor of the Massachusetts School of Law's Law Review and was a regional finalist in the American Trial Lawyers' Association Trial Advocacy Competition.

LONDONDERRY
One Verani Way
Londonderry, NH 03053
Phone: (603) 894-4141
Fax: (603) 216-2748

NORTH ANDOVER
231 Sutton St, Suite 1B
North Andover, MA 01845
Phone: (978) 686-4645
Fax: (603) 216-2748

NASHUA
20 Trafalgar Sq, Suite 443
Nashua, NH 03063
Phone: (603) 894-4141
Fax: (603) 216-2748

BEVERLY
100 Cummings Center, Suite 307-G
Beverly, MA 01915
Phone: (978) 969-0331
Fax: (603) 216-2748