

Protect Your Spouse and Children by Updating Your Estate Plan

Article By:

Shana Siegel

Imagine you get married and within a year or two, your new spouse passes away. Now, imagine that your grief is compounded with financial stress. That situation recently occurred for two of our clients. In both cases, the deceased spouse had not updated their estate plan and in both cases, this proved devastating for the surviving spouse.

Wills

In one case, an old [Will](#) from before the marriage existed. The assets were left to a prior spouse and siblings. Under New Jersey and New York state law, gifts to prior spouses are automatically revoked by law. However, that simply results in all assets passing to the alternate beneficiary under the old Will. In this case, that meant all assets passed to the deceased spouse's siblings, not to the new spouse.

In New Jersey and New York, spouses can elect against a Will to claim a share of their spouse's assets. However, it only results in approximately one-third of the total assets going to them. This is far short of what most people desire to leave for their partner.

In the other case, there was no Will. The intestacy statute does not fully protect spouses either. The law in New Jersey provides that if there is no Will most assets go to the surviving spouse, but nearly one-fourth goes to the deceased's parents. If there are children from a prior marriage, then a little more than half passes to the spouse.

Beneficiaries

Moreover, it is essential that [beneficiary designations](#) are updated. In our cases, much of the assets were governed by pre-existing beneficiary designations to remote relatives. We were able to thwart beneficiary designations to prior spouses as they are removed as beneficiaries by the operation of law.

In another case, a niece instead of the new spouse was still named as the beneficiary of the deceased's substantial IRA. This resulted in several hundred thousand dollars going to that niece instead of to the deceased's beloved wife and infant child. While 401ks must be left to the spouse

under ERISA (or require spousal consent to name another beneficiary), this is not true for IRAs and other types of accounts.

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