

How Divorce Can Impact Your Estate Plan in Virginia – Real Estate and Personal Property

Article By:

Catherine F. Schott Murray,

After addressing [property settlement agreements](#) and [beneficiary designations](#), this next article in the series on divorce and estate planning discusses real estate and personal property.

Married couples tend to own real estate together, whether as a primary residence, a vacation home or an investment property, and may have purchased a variety of personal property together, such as artwork, furnishings and the like. Upon divorce, Virginia law dictates that all rights in real and personal property, “including the right of survivorship in real or personal property title to which is vested in the parties as joint tenants or as tenants by the entirety, with survivorship as at common law, shall be extinguished. . .” [Va. Code §20-111](#). Thus, by operation of law, the ownership of real and personal property is converted to ownership as tenants in common.

Now depending on the property settlement agreement, each party will generally own fifty percent of the real and/or personal property. In order to ensure that the real and/or personal property is used for an individual’s benefit during incapacity and distributed to his or her beneficiaries upon death, a person should consider transferring such real and personal property to a revocable living trust.

Alternatively, for the real property, Virginia has the [Uniform Real Property Transfer on Death Act](#), which allows a person to essentially designate a beneficiary for his or her real property by way of a transfer on death deed. This deed is revocable, provided certain formalities under the statutes are followed, but allows for you to be on record to the public as to who or what entity should receive the real property. Although it is a revocable designation, it is not that straightforward to change, particularly if you decide to do so multiple times, which may create issues if death occurs in the midst of a change. Thus, a transfer on death deed should only be considered in certain circumstances depending on your overall estate plan.

With all that said, keep in mind that if nothing is done to handle the real and personal property, then both will pass by operation of law (and perhaps to unintended beneficiaries – think [#Prince](#)). More control exists if real and personal property are passed through an effective estate plan, (e.g., by way of a revocable living trust) versus letting state statute decide. So, if you are recently divorced or in the process of divorcing, ask yourself what should happen to your real and personal property and be sure to take action so the real and personal property does pass in accordance with your wishes.

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