CARLTON FIELDS

Update Beneficiary Designations After Divorce or Annulment

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On July 1, 2015, the Florida Fourth District Court of Appeal held, with a few exceptions, upon entry of a final judgment of dissolution or annulment, any provision of a will that "affects" a former spouse is void under section 732.507(2), Florida Statutes. *See Carroll v. Israelson*, 169 So. 3d 239 (Fla. 4th DCA 2015) (followed in *Galazka v. Estate of Perkins*, 184 So. 3d 635 (Fla. 4th DCA 2016)). The *Carroll v. Israelson* court applied the statute to invalidate provisions of a will establishing trusts upon the decedent's death for the benefit of his former wife's relatives, because such provisions "affected" her. The court observed divorcing parties, even when their attorneys advise them to update their estate plans, resist thinking about their own mortality and procrastinate post-divorce estate planning. But section 732.507(2), Florida Statutes protects them by making void, upon entry of a final judgment of dissolution or annulment, any provision of a will that "affects" a former spouse. Read the verb "affects" broadly, as the *Carroll* court did. For a provision to "affect" a former spouse, the provision does not need to have a direct financial benefit on the former spouse. *Carroll* held the date of dissolution or annulment triggers the statute. It does not allow for "post-death legal gymnastics to manipulate the issue of whether a will provision 'affects' the former spouse." Exceptions include:

- A specific post-divorce designation of a former spouse in a will or trust as an irrevocable beneficiary;

- An obligation in a final judgment to make the former spouse an irrevocable beneficiary

By updating beneficiary designations in wills and other instruments upon divorce or annulment, parties may avoid leaving costly, acrimonious, drawn out litigation as part of their legacy. ___ **Related Articles**

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