

... 'Til Death (or Divorce) Do Us Part

In North Carolina there are only two ways a legal marriage can end:

- 1) Death of a spouse; or
- 2) Separation for one year, without a period of reconciliation, followed by an entry of an order for divorce

As the divorce rate rises in the United States, the possibility of a marriage ending in divorce is now about 50%. The North Carolina requirement of physical separation of a married couple for one year before a divorce is granted results in some important legal implications.

Death, separation, and divorce all have different effects on one's estate plan.

| Document | Upon Death | During Separation | Upon Divorce |
|---------------------------------------|---|-------------------|--|
| Financial Power of Attorney | Terminates. | No effect. | If former spouse named as Agent, then authority terminates. |
| Health Care Power of Attorney | Terminates, except for post-death matters (such as anatomical gifts and the disposition of remains). | No effect. | If former spouse named as Agent, then authority terminates. |
| Joint Bank Accounts | Survivorship Account — Goes to the surviving owner. Non-Survivorship Account — Portion distributed per deceased spouse's estate. | No effect. | No effect. |
| Life Insurance | Designated Beneficiary — Goes to the beneficiary. No Designated Beneficiary — Per deceased spouse's estate. | No effect. | No effect. |
| Retirement Accounts | Designated Beneficiary — Goes to the beneficiary. No Designated Beneficiary — Per deceased spouse's estate. | No effect. | Does not usually automatically revoke former spouse as designated beneficiary. |
| Intestate (Die Without A Will) | Estate distributed per the terms of North Carolina law. | No effect. | Former spouse loses all rights in estate of other spouse. |
| Will | Estate distributed per the terms of the Will. | No effect. | Entire document is not revoked, but all provisions in favor of the former spouse are revoked. *Provisions in favor of the former spouse's relatives remain.** |
| Revocable Living Trust | Estate distributed per the terms of the Revocable Living Trust. | No effect. | Entire document is not revoked, but all provisions in favor of the former spouse are revoked. *Provisions in favor of the former spouse's relatives remain.** |