

# ***The “Daily Plan-It”™***

*SHUMATE BROKERAGE CORP.*

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## **Post Divorce Planning: Problem or Opportunity?**

We absolutely understand that after completing a painful process like a divorce, people don't want to sit down with lawyers and financial professionals to review their financial planning.

Unfortunately, the need for this type of action after a divorce is critical. In the recent case of Trueblood v. Roberts, No. A-05-1084, the Nebraska Court of Appeals has outlined the consequences of failing to do such post-divorce planning.

## **Property settlement agreement not enough**

In this case, a husband and wife signed off on how to divide their assets through a property settlement agreement. The divorce was finalized, and each party went their separate ways.

Later, the husband died. Unfortunately, he never changed his beneficiary designation on his life insurance policy to someone other than his ex-wife. As a result, the life insurance company paid the proceeds to the former spouse.

## **Here comes the lawsuit**

The personal representative of the husband's estate filed a lawsuit alleging that the divorce property settlement agreement provided that the husband retain his own life insurance policy. The argument was simple. The agreement referenced the existence of two life insurance policies, and stated that both parties would retain their respective policies as the property of each individual.

While the court agreed that the life insurance policy belonged to the ex-husband, it stated that the divorce decree and settlement agreement lacked any language reflecting that the husband didn't intend that the wife could not receive any death benefit if she was named the beneficiary of the policy.

## **Essential planning tip:**

**The will and trust don't matter when it comes to beneficiary designations.**

The Nebraska court followed a general rule that the divorce does not affect the beneficiary designation, only the ownership. Reading between the lines, one could easily reach the conclusion that the ex-husband did not want his ex-wife to receive the life insurance. The Last Will and Testament obviously stated that, or the personal representative would not have filed a lawsuit. However, the husband failed to change the beneficiary to someone other than his ex-wife, and his wishes could not be accomplished.

As a planning tip, remember that wills and trusts do not control beneficiary designations. If the beneficiary is someone other than the estate or the trust, the beneficiary designation controls the result. If that's the case, the intent of the deceased may be ignored.

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