

The Law and You

What If a Spouse Dies During Divorce Proceedings?

Unfortunately, our society is plagued with many divorces; far too many, in my opinion. By some estimates, 50% of our marriages end in divorce.

I recently encountered an unusual situation where one spouse in a divorce proceeding died. What I learned was so interesting that I decided to share it with my readers.

Divorce law is not my mainstay. But an elderly individual came to me because his wife had filed for divorce. He wanted to protect his assets as much as possible.

Fortunately, there were no children from the marriage. So, the primary issues were over property and alimony. That is, how to divide their assets and whether and how much alimony should be paid.

My client was beyond the traditional retirement age of 65, and he had accumulated a substantial retirement account. His wife was somewhat younger. She had not accumulated many assets, but she was a professional with reasonable income.

During the proceedings, the wife wanted to quickly terminate the marriage and resolve the financial matters later. So, it was agreed to “bifurcate” the divorce proceedings. This means, that the divorce proceeding was split into two parts: one for the divorce itself, and one to resolve the financial issues.

To accommodate her request, my client agreed to have the court enter a decree of divorce. That in fact happened.

Following the entry of divorce, negotiations continued over the amount of alimony and how the marital property should be divided between them. Progress was slow.

Approximately 10 months later, my client unexpectedly died. The big question raised was how would his death affect the divorce proceedings?

First, the temporary alimony that my client had been paying was terminated. The law is quite clear on this issue. Alimony terminates upon the death of the spouse who is obligated for such alimony.

But what about the proceedings? Who stands in the shoes of the deceased spouse? Should the proceedings continue? These were the kinds of questions raised under these unusual circumstances.

Utah’s statutes offer no help. They are silent on the issue of death of a spouse during divorce proceedings.

Utah case law, however, offers some help. Utah’s Supreme Court has ruled that if a spouse dies during divorce proceedings, the divorce proceeding ends and the surviving spouse is put back into the position just prior to the commencement of the divorce action.

This means that the surviving spouse is treated as though no divorce petition was ever filed. He or she then becomes the “surviving spouse.”

But recall that in my case, the divorce proceeding had been bifurcated. What then? There was no help found in any case law from Utah’s appellate courts. Other states, however, had addressed this novel issue.

Appellate courts in other states had ruled that the divorce was final in bifurcated cases but that the financial issues should continue as though no death had occurred. In our case, I contended that my client was legally divorced at the time of his death. But I agreed that the deceased’s estate should address the property issues existing in the divorce proceeding.

My client’s ex-wife, through her attorney, asked the court to declare her as the surviving spouse. The request was made assuming that the divorce was not “final.”

Prior to 1985, Utah law provided that a divorce did not become final until 90 days

after the decree of divorce was signed by the judge. Present law provides that the decree is final the judge signs the decree.

In our case the judge signed the decree more than 10 months prior to the death of my client. Accordingly, the divorce was final and could not be set aside.

The ex-wife eventually lost her attempt to become the surviving spouse. She did, however, receive the same property from my client's estate that she would have if he had not died.

One final issue raised in this case was over the beneficiary designations on life insurance policies and retirement accounts. The ex-wife was listed as beneficiary.

This issue was resolved by our Legislature in 1999. This relatively new law provides that the beneficiary designation on life insurance policies or on retirement accounts or similar instruments is revoked upon the entry of a decree of divorce.

If you are in doubt about your particular situation, you should consult with an Attorney. Check your local Yellow Pages.