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DIVORCE LAW CAN IMPACT ESTATE PLANNING AND PROBATE LAW

In the case of the Estate of Danny Keith Ellis, the Court dealt with the effect of a Marital Dissolution Agreement on jointly titled bank accounts between divorced spouses. The facts were that Mr. Ellis (the "Husband") and his Wife divorced and entered into a Marital Dissolution Agreement ("MDA") in November, 1999. The MDA provided that the MDA would apply to all property now owned by Husband and Wife individually or jointly. Further, the MDA provided that the Husband would have possession of two checking accounts at SunTrust Bank and Educators Credit Union. The Husband died unexpectedly without a Will at the age of fifty-two years, and prior to his death, he failed to notify the Bank and Credit Union of the ownership change in the jointly owned accounts.

The former Wife withdrew all the funds in the two accounts (which amounted to over \$148,000.00) because she was still shown on the accounts as a joint owner. The Administrator of the deceased Husband's estate filed a Petition for Declaratory Judgment and Recoupment of Funds on the basis that the two accounts in dispute became the sole property of the Husband under the terms of the MDA.

Both the Trial Court and the Court of Appeals ruled in favor of the Husband's estate in spite of the fact that he never changed the ownership of the designated accounts with the two financial institutions. The Court of Appeals explained that an MDA is a contract between Husband and Wife in contemplation of divorce proceeds. The MDA is an agreement as to distribution of marital property, and it does not lose its contractual value by merger into the Decree of Divorce. Although the Court of Appeals pointed out that a joint bank account with right of survivorship is a binding contract between the joint owners and the bank, the Court further pointed out that contracts can be modified by subsequent agreements. In the Ellis case, the MDA served as a modification of the ownership rights in the joint bank accounts. The Court described the MDA as "tantamount to an amendment to the contract."

MY RECOMMENDATION: The Court reached the right decision in the Ellis case, and the deceased Husband's estate eventually received the funds, but it was only after legal proceedings in a Trial Court and the Court of Appeals. This court process served to be a costly proposition for the Husband's estate beneficiaries. Prudent action would necessitate changing title to bank accounts, beneficiary designations on life insurance, IRA's and 401(k)'s, revising Wills, Powers of Attorney, and Healthcare Directives after a divorce.

Yours very truly,

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