

**Juxtaposing Divorce and Estate Planning
Yesterday, Today and Tomorrow
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- I. The Elective Share – sections-732.201-732.228
 - a. 30% of Everything
 - i. Inclusions
 - 1. Joint accounts, ITF and POD Accounts
 - 2. Cash Value of Life Insurance
 - 3. Ira's and Qualified Plans
 - 4. Assets held in a Revocable Trust
 - ii. Exclusions
 - 1. Proceeds of Life Insurance – unless it's paid to Estate
 - 2. Non-Florida Real Estate
 - 3. Annual Gift Exclusion (currently \$13,000 per donee)
 - 4. Exclusions for Medical Expenses and Tuition
 - 5. Gifts Made more than 1 year before death
- II. Equitable Distribution Principles
 - a. Marital v. Non-Marital Property
 - b. Length of Marriage
 - c. Special Equities
 - d. Who provided the funds.
 - e. NOT APPLICABLE
- III. Planning Opportunities

- a. Borrow out the Cash value and convert to excluded assets
 - b. Make gifts and pay qualified Medical expenses and Tuition
 - c. Elective Share Trust
 - i. 100% all income, HEMS Principal Invasion plus General Power of Appointment
 - ii. 80% all income and HEMS Principal Invasion
 - iii. 50% Income only
- IV. Insurance in Dissolution
- a. Purpose of the Life Insurance Policy
 - b. Who should be the Owner
 - c. Who should be the beneficiary
 - d. Dangers of irrevocable beneficiary designations
 - e. Use of Trusts
- V. Divorce's Effect on Existing Estate Planning Documents
- a. Former spouse is deemed predeceased for purposes of Revocable Trust and Last Will and Testament
 - b. Tenants-by-the-Entirety Property (in Florida) is converted to tenant-in-common property but, JTWROS property is not effected
 - c. Effective July 1, 2012 – Former spouse deemed predeceased for purposes of Life Insurance, IRA and POD accounts
 - d. Traps for the Unwary

- i. Only former spouse is deemed to have predeceased the Testator (Grantor)
former spouse's children or collateral relatives remain as beneficiaries or
successor fiduciaries.
 - ii. Former spouse's out-of-State children can no longer serve as Personal
Representative
- e. Power of Attorney
 - i. Spouse removed as attorney-in-fact when dissolution proceedings are filed
 - ii. Successor attorney-in-fact designation is not effected by dissolution
proceedings (watch out for step-children and in-laws)
- f. Health Care Surrogate
 - i. Spouse removed as Health Care Surrogate when dissolution proceedings
are **completed**, unless otherwise stated in the document.
 - ii. Successor Health Care Surrogate designation is not effected by dissolution
proceedings (watch out for step-children and in-laws)

VI. Asset Protection Issues – Third Party Creditors

- a. Exempt Property
 - i. Homestead
 - ii. Cash Value Life Insurance
 - iii. Annuities
 - iv. IRA – however acquired
 - v. Pre-paid College and 529 Plans
- b. Exempt Status
 - i. Tenants-by-the Entirety

c. Planning Opportunity

- i. Convert tenants-by-the-entirety property to other type of exempt property
prior to dissolution and distribution

VII. Post-Divorce Issues – Children

a. Trust Provisions

- i. Income
- ii. Principal
- iii. To HEMS or not to Hems (will the former spouse pay his/her share)

b. Fiduciary Considerations

- i. Former Spouse
- ii. Family Member
- iii. Independent Professional Trustee

c. Homestead

- i. Florida Constitution Article X, section (c)
- ii. The homestead shall not be subject to devise if the owner is survived by
spouse or minor child...
- iii. Irrevocable Homestead Trust – Section 732.4017
 1. Grantor retains Life Estate
 2. Property retains its homestead character in trust
 3. Upon the death of Grantor, homestead property continues to be
held, in trust, for children
 4. Upon the youngest child attaining the age of 18 years, the
homestead property reverts back to the Grantor

VIII. Natural Guardians

- a. Section 744.301 – Effective July 1, 2012
- b. Parent granted “sole parental responsibility” is Natural Guardian
- c. If neither granted “sole Parental Responsibility” then both are Natural Guardians