**ESTATE PLANNING MEETS FAMILY LAW**

1. Top Five Areas of Overlap
2. Marital Agreements
3. Estate Planning Documents and Divorce
4. Trust Distribution Provisions and Income Characterization
5. “Descendants” & Modern Concepts of Family
6. Miscellaneous Issues Involving Entities
7. Marital Agreements
8. Observations of an Estate Planner Who Has Partners Who are Family Lawyers
9. Estate planners may focus on negotiating distributions in the event of the death of one spouse (esp. the “moneyed” spouse); family lawyers rarely focus (at least on death).
10. Observations of an Estate Planner Who Now Has Partners Who are Family Lawyers
11. Family lawyers focus on details which could lead to future challenges of enforceability which estate planners may or may not focus enough on.
12. Family lawyers do not serve as notary
13. Family Lawyers also address selected waivers in more detail than some estate planning lawyers may in marital agreements.
14. Considerations to be Aware of in Divorce & Death: ERISA plans
15. Retirement Benefits under Erisa
16. Only a spouse can waive survivor benefits under ERISA.
17. May be a negotiated term of the Premarital, but must then be ratified post marriage. If there is no post marriage ratification, the waiver will not be effective.
18. Considerations to be Aware of in Divorce & Death, cont.: Real Estate
19. “Probate” Right to Occupy Homestead in the Event of Death
20. Waiver of Right to Reimbursement
21. Separate Property Residence
22. Additional Matters Which Should be Addressed in Marital Agreements
23. Fiduciary duty- Pre/Post Marital Agreements
24. Payment to non-moneyed spouse during marriage and/or in the event of divorce
25. Other creative options in the event of death or divorce
26. Public policy provisions related to children vs. financial obligations for children
27. Alternative dispute resolutions options
28. Estate Planning Documents and Divorces
	* 1. Issues During The Pendency Of Divorce Proceeding
29. Section 253.001 of the Texas Estates Code states that no order of a Texas court (including a temporary order) may interfere with the right of a divorcing individual to update their estate planning documents during the pendency of the divorce
30. Of course, if an estate planner was hired under a joint engagement, that estate lawyer should tell both spouses that they should seek separate counsel should they want to update their own estate planning documents (to avoid having to disclose to the other spouse what is happening)
	* 1. Impact Of Divorce On Wills
31. Tex. Est. Code § 123.001 removes ex-spouse (and ex-spouse’s relatives) as beneficiaries and fiduciaries (all provision in the Will shall be read as if former spouse and each relative of the former spouse have failed to survive testator
32. Applies to an Irrevocable Trust into which a Will pours over
	* 1. Impact Of Divorce on Power of Attorney Designations
33. Ex-spouse as Agent in Financial Power of Attorney (SDPOA)
34. Ex-spouse as Agent in Medical Power of Attorney (MPOA)
	* 1. Impact Of Divorce on Trust Agreements
35. Revocable Trusts
36. Irrevocable Trusts
	* 1. Impact of Divorce on beneficiary designations for Retirement Accounts
37. Ex-spouse as Beneficiary of “normal” Retirement Benefits
38. Ex-spouse as \*Beneficiary of “TRS” Retirement Benefits
39. Ex-spouse as Beneficiary of Life Insurance Policy Generally
40. Ex-spouse as Beneficiary of Life Insurance Policy Under Federal Law
41. Trust Distribution Provisions and Characterization of Income
42. Current Texas Law on Trust Income Characterization - Factors
43. Whether income was distributed during marriage;
44. Whether the trust was created by a 3rd party or self-settled;
45. Whether the spouse-beneficiary has an interest in trust corpus; and
46. If the income wasn’t distributed, whether the distribution was discretionary or mandatory.
47. Donor intent upon creation of trust.
48. Form Provisions Addressing Characterization of Trust Income
49. “Descendants” and Modern Concepts of Family
50. Possible Inadvertent Exclusion from “Traditional” Definitions
51. Children of Same-Sex Couples
52. Children Born via Surrogate – Exclusion from Genetic Mother’s Estate
53. Children Given up for adoption
54. Adult Adoption
55. Step-Child Adoption
56. Miscellaneous Issues Involving Entities
57. Issues from Formation of Entities During Marriage