

Robert L. Aldridge, Chartered  
Attorney at Law  
1209 North Eighth Street  
Boise, Idaho 83702-4297  
Telephone: (208) 336-9880  
Fax: (208) 336-9882  
State Bar No. 1296  
Cell phone: (208) 631-2481  
email: Bob@RLAldridgeLaw.com

TALKING POINTS  
SB 1300  
Effect of Divorce

1. General Subject of Bill

This bill concerns the effect of a decree of divorce on various documents, planning methods such as rights of survivorship, and beneficiary designations.

2. Existing Problem

Existing Idaho law has a very limited automatic effect of divorce on various matters that should be taken care of in the aftermath of a divorce proceeding. Divorce proceedings, which used to be handled almost entirely by attorneys, now are very often handled by the parties themselves without any legal advice, using pre-made forms. Therefore, the "checklist" of matters that should be taken care of after or during a divorce proceeding is often simply missed, resulting, for example, in assets passing at the death of one of the parties totally contrary to the actual wishes of the decedent. The parties simply are not aware of the need for the changes.

3. Solution in Bill

This situation has been recognized nationally as a problem, and the Uniform Probate Code, used in Idaho, has been updated to cover those situations, protecting persons who do "pro se" divorce on their own.

The specifics of the bill:

a. In 15-2-802, on page 1, the bill corrects some technical problems in the existing language. First, in the Probate Code, the word "person" refers not only to individuals, but also to entities such as corporations, partnerships, limited liability companies and so forth. Therefore, the word "person" is changed to "individual", since only individuals can divorce. Second, on 15-2-802(b)(2), page 1 line 23, the reference should have been to an "invalid" decree of divorce, since a valid decree is covered in (b)(3), immediately below. Therefore, that word is inserted.

b. The bill adds a new §15-2-804, as Section 2 of the bill, starting on page 1, line 31, to provide detailed coverage of when probate and nonprobate transfers may be revoked by a divorce.

a. The first portion is definitions, starting on page 1, line 32. These are all common sense definitions. One of interest is on page 2, lines 8-11, to define "relative of the divorced individual's former spouse", since that term is used later in the statute. Essentially that is an individual that is related to the former spouse both before and after the divorce, but after the divorce, is not related to the divorced individual. A brother-in-law or mother-in-law would be typical examples. The definitions also clearly describe what is meant by "revocable", page 2 lines 12-19, since that is not always clear in general law.

b. 15-2-804(b), starting on page 2, line 20, defines what the effect of a divorce or annulment in a number of situations. Lines 20 and 21 make it clear that a "governing instrument", defined above, and usually a pre or post-nuptial agreement of some kind, can override the terms of this statute. This gives the parties ability to plan results contrary to the default provisions of this bill if they wish.

i. (b)(1), page 2, lines 24-37 specifies in subpart (i) that the divorce or amendment revokes any revocable disposition or appointment of property to the former spouse or a relative of the former spouse - this would mostly commonly be either estate planning documents such as wills or trusts, or beneficiary designations such as life insurance or annuities, or Pay on Death or Transfer on Death designations. It also in subpart (ii) revokes powers of appointment granted to the former spouse or a relative of the former spouse. A power of appointment most commonly allows the person to change the distribution of the property of the decedent and may be exercised in a Will or by other written methods. And finally in subpart (iii) it revokes nominations of the former spouse or relative of the former spouse to serve in any fiduciary capacity, such as Personal Representative, trustee, conservator, agent under a power of attorney, or guardian.

ii. (b)(2), page 2, lines 38-41, severs Joint Tenancy With Right of Survivorship into equal tenancies in common. Community Property With Right of Survivorship is already covered by another statute.

c. 15-2-804(c) clarifies that severance under (b)(2) does not affect third party interests in the property that are relying on the survivorship language, unless a writing declaring the severance has been noted, registered, filed, or recorded in the appropriate records.

d. 804(d), page 2 line 49 to page 3 line 4, clarifies the effect of revocation.

Essentially the former spouse or relative of the former spouse is treated as if they had either disclaimed the property right or as to a nomination had died immediately before the divorce.

e. 804(e) clarifies that if the parties remarry or the divorce is nullified, then the provisions for severance, revocation and so forth in the statute are nullified as well and the prior status restored.

(f) 804(f) limits the effects of this section purely to those circumstances described in 15-2-804 and in 15-2-803, the slayer statute.

(g) 804(g) provides protections to Payors and other third parties who rely on the written documents in good faith, even if the transfer of property by the Payor or other third party was revoked or an interest severed, etc., by the terms of 15-2-804, unless the Payor or other third party has received written notice of the claimed forfeiture or revocation under 15-2-804. (g)(2), starting on page 3, line 21, describes in detail how the written notice must be delivered and the allowed actions of the Payor or other third party after properly receiving such notice, including paying over the sums held to the court having jurisdiction.

(h) 804(h)(1), page 3 line 40 to page 4 line 3, gives similar protection to bona fide purchasers without notice who pays out or receives property from the former spouse or relative of the former spouse, but the former spouse or relative of the former spouse, or a third party who did not give value for the property, is liable for the value or return of the property.

(i) 804(h)(2) covers situations where there is preempting federal law, for example, bankruptcy or seizure laws.

#### 4. Possible Questions

a. Why help people who choose not to have the protection of legal advice from an attorney? Many people do not have the funds to pay for legal fees of a contested divorce, which can be dramatic, or even an uncontested divorce, which can still be expensive. Or they may believe that they are in full agreement on the terms of the divorce and there are forms that appear to lead them directly and fully through the process. However, failure to be aware of the outside matters that need to be taken care of leads to future problems, legal proceedings, emotional battles, and so forth. This statute simply carries out the standard procedures that should be followed in any divorce, while still letting divorcing individuals override the provisions of this bill by written documents.

b. Will this cause problems for banks, lenders, mortgage holders, investment accounts, and so forth? No. Such third parties are protected unless they receive actual notice in proper form, so long as they act in good faith. Representatives of such industries and third

parties were involved in the creation of this bill at the national level and believe that they are adequately protected.

#### 5. Fiscal Impact

This bill should eliminate or greatly limit future court battles caused by failure of the divorcing parties to take proper steps at the time of the divorce. This will free up court time and expenses and also reduce legal costs to individuals who often cannot afford such costs.