

ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

Why Shannen Doherty's Divorce Made Headlines: Understanding Separation Agreements and Their Legal Impact Upon Death

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You may be surprised to learn that over 90% of divorce cases settle out of court, so why did the separation agreement (an agreement signed by divorcing parties) between Shannen Doherty and Kurt Iswarienko recently receive so much press? It's because Doherty's now ex-husband signed the agreement merely hours before the 90210 star tragically passed away from breast cancer on July 13, 2024. Two days after her passing, the Los Angeles County Judge granted the couple a divorce and enforced their separation agreement.

So that begs the question, what happens when one party involved in a divorce action dies before the divorce is finalized?

Both in Massachusetts and Rhode Island, when one party involved in a divorce action dies before the divorce is finalized, the divorce process ends, because death automatically abates the proceedings. Unlike California, the court will not terminate the couples' status as a married couple. The surviving spouse is treated as a widow, not a divorced party.

Here's where it gets interesting: if the couple has an executed separation agreement, like Doherty and Iswarienki, Rhode Island and Massachusetts Courts *may* enforce that agreement and its terms.

In Massachusetts, the law is quite clear. Separation agreements freely entered into with the intention of ending the marriage are generally favored and enforceable. In looking at intent, the courts will consider several factors, such as:

1. Adherence to the Agreement: Did both parties stick to the agreement's terms after signing?
2. Reconciliation Attempts: Was there any indication that they were trying to get back together? If one of them hadn't passed away, would they have scrapped the agreement?
3. Fairness and Reasonableness: Was the agreement fair and reasonable at the time it was signed?

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Further, Massachusetts courts will consider any "countervailing equities," such as whether a former spouse would become a public charge without more financial support or whether there is any evidence of fraud or coercion in entering into the agreement.

Additionally, if the couple filed for an uncontested divorce in Massachusetts via a joint petition for divorce, the separation agreement must already have been approved by the Court to remain enforceable after one party's death. For contested divorces, the couple must specifically waive their rights as surviving spouses for the agreement to be valid posthumously.

Rhode Island hasn't seen a case that directly addresses this issue yet, but a 2018 Superior Court decision still teaches us a valuable and related lesson: after a spouse dies, the terms of a separation agreement are enforceable against the decedent's estate. In *In re Estate of Borges*, the Court decided that the beneficiaries listed in the separation agreement for a specific piece of real estate trumped over those named in an irrevocable trust in an instance where the two designations conflicted.

To avoid any legal headaches concerning the validity of your separation agreement, it is best to consult an attorney to ensure that you have the correct terms in your agreement to protect you in the event of death before the divorce is final.

In the end, while we might not want to think about it, understanding the implications of death during a divorce can save a lot of heartache—and headlines—down the road.

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