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Revocation of Beneficiary Designations Upon Divorce

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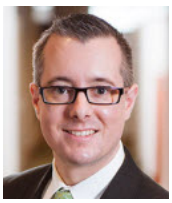
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Minnesota's revocation-upon-divorce statute provides for the automatic revocation of a spouse as a beneficiary in the event of divorce: "Except as provided by the express terms of a governing instrument the dissolution or annulment of a marriage revokes any revocable disposition, beneficiary designation, or appointment of property made by an individual to the individual's former spouse in a governing instrument." Minn. Stat. sec. 524.2-804, subd. 1(1).

The current version of the statute was passed in 2002 and filled in the gap left by the prior version which applied only to wills and not beneficiary designations in life insurance policies or retirement plans.

Before the 2002 statutory amendment, a judgment and decree which awarded a party "all right, title and interest" in a life insurance policy or retirement plan but did not expressly divest the former spouse as a beneficiary left the door open for arguments about whether or not such language operated as a divestiture. Compare Larsen v. Nw. Nat'l Life Ins. Co., 463 N.W.2d 777, 780 (Minn. Ct. App. 1990) (interpreting "all right, title and interest" language broadly to encompass divestiture of former spouse as beneficiary of life insurance policy) and Estate of Rock, 612 N.W.2d 891, 895 (Minn. Ct. App. 2000) (interpreting "all right, title and interest" language to be ambiguous and affirming district court's determination that such language did not divest former spouse as beneficiary of IRA).

The automatic divestiture provided for by the revocation statute helps to eliminate this problem, although it would not apply to beneficiary designations in plans governed by ERISA. See Egelhoff v. Egelhoff ex rel. Breiner, 532 U.S. 141, 143 (U.S. 2001) (holding that Washington's revocation-upon-divorce statute was preempted by ERISA to the extent it purported to revoke beneficiary designation of plan governed by ERISA). The revocation statute "reflects legislative judgment that ex-spouses often intend to change their beneficiaries." Lincoln Benefit Life Co. v. Heitz, 468 F.Supp.2d 1062, 1069 (D. Minn. 2007). Although that assumption is true much of the time, there are many instances where a spouse wants his or her ex to remain a beneficiary after the divorce. In those situations, the statute can create problems where a judgment and decree lacks the "express terms" necessary to avoid the automatic revocation of the beneficiary designation.

A recent unpublished decision from the Court of Appeals provides an example of this. The parties were married in 1991. In 1997 wife purchased a policy of insurance on her life and named husband as the primary beneficiary and wife's estate as the contingent beneficiary. Wife had the authority to change the beneficiary designations at any time but never did so. A stipulated judgment and decree was entered in 2011 which contained a finding of fact that "[t]he parties each own a term-life insurance policy with no cash value." No conclusion of law made an award of the policies or addressed the beneficiary designations. Wife died seven months later never having changed the beneficiary designations.

Litigation arose between wife's estate and husband over the insurance proceeds. Husband alleged that he always paid the premiums on wife's policy, that wife knew husband was a beneficiary of her policy, and that she wanted him to remain a beneficiary following the dissolution. Husband's allegations were disputed by wife's family members. Husband brought a

motion for summary judgment which was granted by the district court. Wife's estate appealed and the Court of Appeals reversed. The designation of husband as a beneficiary was revoked by operation of Minn. Stat. sec. 524.2-804 because the judgment and decree did not provide for husband to remain the beneficiary of wife's policy. In re DeJoode, No. A13-0824 (Minn. Ct. App. Jan. 13, 2014).

Thorough drafting in judgment and decrees will go a long way to avoiding these problems. For starters, all policies of life insurance should be identified in the findings of fact. Clients often pay attention to policies with cash value but may overlook term policies with no cash value or group policies through employment, all of which need to be addressed. The conclusions of law should expressly address the policies and include clear language divesting the spouses as beneficiaries if that is what is intended.

For example, "Wife is awarded her Prudential term life insurance policy No. 1234, including the divestiture of Husband as beneficiary thereof." The same divestiture language should be used for any other asset with a beneficiary designation. Once the judgment and decree has been entered, clients should be instructed to implement the decree by updating their beneficiary designations. Where the parties agree that one of them will remain a beneficiary post-decree, the conclusions of law should state so explicitly in order to avoid the automatic revocation of Minn. Stat. sec. 524.2-804.

These drafting suggestions are things that most of us are already doing, but with the increasing number of pro se parties and people using document preparation services, we are likely to encounter a judgment and decree that lacks the language necessary to implement the parties' agreement, whatever that may be. (The stipulated judgment and decree form for dissolutions with children on the Minnesota Judicial Branch website does not address life insurance at all.)

Even if the judgment and decree awards the parties their respective insurance policies, they may decide to make their own informal agreements after the divorce not realizing the effect of the revocation statute. For example, parties may decide after the divorce that they will remain beneficiaries of their respective life insurance policies until their children graduate from college. To implement their agreement, the parties should rename each other as beneficiaries on their policies and memorialize their agreement in a written stipulation filed with the court.

Finally, it is important to note that there is an open question as to whether application of Minn. Stat. sec. 524.2-804 to life insurance policies that predated the statute violates the Contracts Clause of the United State Constitution. See Lincoln Benefit Life Co. v. Heitz, 468 F.Supp.2d 1062, 1068 (D. Minn. 2007) (rejecting as applied constitutional challenge brought by former spouse and named beneficiary because she had no vested contractual right until her ex-husband's death in 2005, after the 2002 enactment of the revocation statute) and Mony Life Ins. Co. v. Ericson, 533 F.Supp.2d 921, 925 (D. Minn. 2008) (holding application of statute to divest former spouse as beneficiary of policy which predated statute violated Contracts Clause because it substantially impaired contractual relationship between the insurance company and the decedent policy owner). The former spouse in DeJoode made this constitutional argument but did not notify the attorney general so the Court of Appeals did not consider it.

Although the assumption underlying the revocation statute is sensible, it is important to be mindful of the effect of the statute in those instances where the parties intend something different, particularly when we are working with clients who did not have counsel during the dissolution.

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