

Is the cash value of my personal whole life insurance policies protected from creditors?

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Answer: It depends.

Massachusetts has many different statutes that provide protection of the cash value of whole life insurance policies, this post is to address three of them namely, Mass. Gen. Laws. c. 175 §§ 119A, 125 and 126.

To understand Massachusetts exemption statutes on life insurance it is necessary to understand the players with respect to a life insurance policy. There is a person that initially purchased the policy, sometimes referred to as the effectuator, who is usually the owner of the policy. Then there is the insured, which is the person whose life the policy is based on. Lastly there is the beneficiary, who is the person that will receive the payout upon death.

Section 119A is fairly easy to understand, basically it comes down to the language of the policy itself. The section permits a policy that has language prohibiting the beneficiary from “commut[ing], anticipat[ing], encumber[ing] alienat[ing], or assign[ing]” the policy to be protected. It essentially allows the terms of the policy, if they shield the asset from creditors, to be honored. If the policy does not have such language, then the section is not applicable. *In re Sloss*, 279 B.R. 6, 9-10 (Bankr. D. Mass. 2002). Simply based on antidotal evidence, the author believes that most life insurance policies freely allow beneficiaries to be changed, and thus, this section will rarely apply. See e.g. *In re Levesque*, Case No. 07-17943, (Bankr. D. Mass. Aug. 21, 2008) (policy language permitting change of owner or beneficiary); *In re Sloss*, 279 B.R. 6, 9-10 (same).

Initially, with respect to section 125 and 126, we must note that the exemptions are focused on the rights of the beneficiaries, instead of the owner(s) or effectuator(s) of the policy. Massachusetts courts have ruled that since section 125 and 126 are based on the beneficiary, that to give the benefit intended, the cash value of a policy is protected in addition to any payout. *Rosenberg v. Robbins*, 289 Mass. 402 (1935); *In re CRS Stream, Inc.*, 217 B.R. 365, 369 (Bankr. D. Mass. 1998); *In re Beach*, 8 F. Supp. 910.

Section 125 is the broader of the two, it essentially has three limitations to the full protection provided for in the statute. The first is that premium payments paid in fraud of creditors are not protected. *In re Sloss*, 279 B.R. 6, 14. This is rarely alleged and hard to prove, thus the author believes this provision would rarely apply. The second limitation is that the protection only goes to the initial beneficiary of the policy. *Id.* So, if the beneficiary has been changed from its inception, the subsequent beneficiary has no protection. The third and last limitation is that the beneficiary must have an insurable interest in the insured. *In re Chevalier*, 330 B.R. 21, 25-26 (Bankr. D. Mass. 2005). This has been described as “some reasonable expectation of pecuniary benefit or advantage from the continued life of the insured.” *Id.* at 26 quoting *In re Caron*, 305 B.R. 614, 616 (Bankr. D. Mass. 2004). Typically, if the insurance policy exists, (at least

with respect to the original beneficiary), there is an insurable interest because life insurance companies do not issue policies unless an insurable interest exists. One final note, the insurable interest need only exist at the time the policy was issued. Id.

Section 126 is the most unique and complicated of the statutes on life insurance. In contrast to section 125, it does not matter if the beneficiary has been changed from when the policy effected, the policy is exempt if the beneficiary is a married woman. Although the statute is silent with respect to who the insured must be, at least one court has ruled that the insured must be the married husband. In re Chung-I Liang and Yu-Chi Chao, Case No. 11-43709, 2012 Bankr. LEXIS 2903 (Bankr. D. Mass. June 26, 2012). One interesting expansion to the statute has been to determine that divorce does not change or alter the initial protection. In re Chevalier, 330 B.R. 21, 27 fn.7 (Bankr. D. Mass. 2002); In re Sloss, 279 B.R. 6, 16. Thus, if a woman gets divorced and is no longer a “married woman” for that reason, the protection endures.

Keep in mind that this blog only explores the applicability of the described statutes in a general sense and is not a replacement for a valid legal opinion by a qualified attorney.

In the event that you have financial and legal matters that you need legal advice for, feel free to contact the author to consider an engagement.

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