

Have You Checked Your Beneficiary Designations Recently?

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Beneficiary designations are forms that are routinely completed for life insurance policies, retirement accounts and even some bank and investment accounts. The forms say who will receive the asset upon the asset owner's death. When a beneficiary designation is in place, it generally controls the disposition of the asset it is associated with, regardless of what one's will or other estate planning document says. As part of a periodic review of your estate plan, it is vitally important to review all of your beneficiary designations. This is particularly important when facing major life events such as divorce, the death of a beneficiary, birth of a child, or the marriage of a beneficiary to a less-than-desirable spouse. While Pennsylvania law does provide some protection in this area, as a practical matter insurance companies and retirement plan administrators are extremely reluctant to pay benefits to anyone other than the individual or individuals named on the beneficiary designation.

The Kennedy Case - The United States Supreme Court decision in *Kennedy, Executrix v. Plan Administrator of the DuPont Savings and Investment Plan* serves as a reminder of the need for retirement plan participants and IRA account holders to review their beneficiary designations on a regular basis, particularly when involved in a divorce.

Mr. Kennedy had named his spouse as the sole beneficiary of his benefits under the DuPont Savings and Investment Plan. He and his wife later divorced, and as part of the divorce proceeding, his former spouse signed a waiver of all of his employee benefits. Unfortunately, the waiver was not made in the form of a "qualified domestic relations order," which is the documentation procedure for allocating retirement benefits in a divorce proceeding under the federal retirement plan law known as ERISA. Following the divorce, Mr. Kennedy failed to change his beneficiary designation. Soon thereafter, he died, and then his former spouse subsequently died. The plan administrator of the DuPont Savings Plan concluded that the beneficiary designation on file was the controlling document and paid the benefits to the estate of the former spouse. The executrix of Mr. Kennedy's estate sued to invalidate the beneficiary designation.

The Supreme Court, in a unanimous decision, ruled that the beneficiary designation was undisturbed by the waiver in the state court proceeding. Essentially, the court ruled that the plan administrator had the right to rely on the plan documents that were available to the participant to name a beneficiary. That document named his former spouse as the beneficiary. If Mr. Kennedy had only changed the beneficiary designation after the divorce, he could have prevented the quagmire that followed. Unfortunately, he failed to do so.

Therefore, we recommend that you check these designations periodically to make sure that no life event has changed the intent of your distribution. Often beneficiary designations provide for a contingent beneficiary, which is essential if the primary beneficiary is deceased. If the primary

beneficiary is deceased and a contingent beneficiary is not named, the IRA custody agreement will generally invoke a default mechanism that will distribute the funds to the IRA accountholder's estate. This is not desirable because the funds become subject to the decedent's creditors and many of the income tax advantages of the IRA will also be lost.

Beneficiary designations can also be very useful in planning to minimize the impact of estate taxes. Many estate plans provide for the creation of a trust benefitting the surviving spouse at the death of the first spouse that shelters assets from taxes when the surviving spouse dies, by keeping those assets out of the survivor's estate. In situations where the bulk of a decedent's wealth is in retirement plans and insurance policies — which typically name the surviving spouse as the designated beneficiary — it can be difficult to find assets with which to fund the estate tax-saving trust. However, if the trust is named as either primary or contingent beneficiary of the account, it is possible to direct the account to the trust instead of to the spouse. This technique is particularly useful for insurance policies, but can also be useful for other assets, such as retirement accounts, under the right circumstances. If you have any questions about the impact of your designations on your estate plan, or if we can be of any help in interpreting a plan document or beneficiary designation, please call us.

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