

# Think About It...

"A Monthly Tax and Technical Publication for Financial Professionals"

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**#509**

## **Beneficiary Designations and Divorce: An Update for Financial Professionals**

### **INTRODUCTION**

We have written many times in the past about court cases where flaws in the beneficiary designation led to the death benefit being paid to the wrong person. See, for example, the August 2014 issue of *Think About It*.

In the recent Louisiana appeals case of *Southern Farm Bureau Life Ins. Co. v. Cox*, No. 51,930-CW (Ct App LA, 2d Cir, April 11, 2018), the court was called on to decide whether the insured's ex-wife or family was entitled to the proceeds of a \$12,000 face amount life insurance policy. The decision in the case turned, in large measure, on state law.

Courts have been called on in many other postdivorce instances to determine the proper beneficiary related to life insurance or other financial products. These court cases have reached arguably inconsistent conclusions.

In an effort to provide relief for situations in which an account owner or policy owner failed to update a beneficiary designation after divorce, many states have enacted laws to automatically revoke the beneficiary status of an ex-spouse. However, not every state has enacted such legislation, nor is the approach to postdivorce beneficiaries necessarily consistent even within a state.

In this issue of *Think About It*, we will review the current status of the states' life insurance beneficiary rules after divorce, take a look at a few recent court cases, and discuss best practices with regard to beneficiary review after divorce.

## **VALIDITY OF LIFE INSURANCE BENEFICIARY DESIGNATIONS AFTER DIVORCE**

Each state has its own approach to how an ex-spouse, named as beneficiary of a decedent's life insurance policy, is treated after divorce.

### ***State Statutes***

We have reviewed the approach that each state takes with regard to beneficiary designations after divorce and summarized the most current information available to us in the appendix to this issue. The current survey shows that slightly more than half of the states have rules that automatically revoke the ex-spouse as beneficiary under a life policy after a divorce. Of the states that have no automatic revocation, Hawaii and Oregon have rules that provide for the *possibility* of revocation if certain conditions are met.

Why do some states keep the ex-spouse in the beneficiary spot after divorce? That's hard to generalize. Here are two bits of trivia:

- About a dozen states have statutes that revoke an ex-spouse as beneficiary under a will but not as beneficiary under a life policy.
- At least three states have bills being considered by the legislature that would implement automatic revocation after divorce—if those bills become law.

Life insurance professionals should keep an eye on the current rules in the states in which they actively practice and also on possible legislative changes in the jurisdictions that have no current automatic revocation rules.

### ***Court Cases Where Ex-Spouse Was Named Beneficiary***

A number of court cases have dealt with the disposition of life insurance proceeds after the spouses divorce. In some cases (*Clarke* and the recent *Cox* case, for example), the ex-spouse as beneficiary has been upheld because no contrary state rule exists. In others (*Rice*, for example), the actual words in the divorce decree directed how the life insurance proceeds would be paid—regardless of the actual beneficiary designation.

*WEST COAST LIFE V. CLARKE, 24 F.SUPP.3D 933 (2014)*

This was a case from the California courts. Jeffrey and Glenda Clarke married in 1998. The Clarkes owned a business together where Glenda contributed the capital and Jeffrey contributed his services. Jeffrey's technological skills were necessary to keep the business going, so in 1999, the Clarkes took out a single policy on Jeffrey's life to protect Glenda in case he died. Glenda was named the primary beneficiary, and the business paid for most of the premiums.

Glenda and Jeffrey separated on November 17, 2007, and their divorce became final almost five years later on November 16, 2012. Unfortunately, Jeffrey died eight days later on November 24, 2012, without ever changing the named beneficiary to his policy.

In May 2009, while they were separated but before the divorce, Jeffrey filled out and signed a change of beneficiary form for the single life policy and gave it to his sister, Kathleen, to file with West Coast Life. The form designated Kathleen as the primary beneficiary of the policy. However, Kathleen waited until two months *after* Jeffrey's death to submit the form to West Coast Life.

The court ruled that Jeffrey had had eight days to change the designated beneficiary between the time of the divorce and the time of his death, and eight days was enough time to properly request a change in beneficiaries. Since he hadn't followed proper beneficiary change procedures, the court ruled that Glenda was still the correct beneficiary and entitled to the proceeds.

#### *SOUTHERN FARM BUREAU LIFE INS. CO. V. COX*

Hillie Patrick Cox took out a whole-life insurance policy with Southern Farm Bureau, for the face amount of \$12,000, in 1989. His insurance application listed his mother Ruby as the beneficiary. In 1992, he executed a change of beneficiary form to list the beneficiary as Connie Gonzales Cox, his wife. He named no contingent beneficiary.

Hillie and Connie divorced in 1999. Hillie never executed another change of beneficiary form, and he died on September 22, 2013.

After Hillie's death a probate court ruled that Hillie's mother was entitled to a life estate with regard to probate assets, and Hillie's sister Debra was the remainder beneficiary. As a result of this judgment, Ruby and Debra had presented claims for the insurance proceeds. Connie, as the named beneficiary, also made claims for the proceeds. Southern Farm Bureau deposited the death benefit with the court and asked it to determine the proper beneficiary.

Ruby and Debra told the trial court that after Hillie and Connie's divorce, they were hostile to each other. They also alleged that Hillie did not intend for Connie to remain on the policy as beneficiary and that he in fact thought that Connie was not the beneficiary. They demanded that the proceeds go to Hillie's estate.

Connie, who had moved to Texas, simply asserted that she was the beneficiary and thus entitled to the proceeds. She moved for summary judgment with the trial court. After a hearing in July 2017, the court stated that the 14-year gap between the divorce and the insured's death were of deep concern to the court and that awarding the proceeds to Connie could possibly lead to an absurd result. The trial court denied Connie's motion for summary judgment.

Connie appealed. The appeals court said:

We perceive nothing inherently absurd about leaving a former spouse on an insurance

policy. Despite the district court's reservations, the fact that Hillie went 14 years without changing the beneficiary could equally well prove that he intended to leave Connie on the policy. Ruby and Debra's argument lacks merit.

It reversed the decision of the trial court and ordered the insurance proceeds to be paid to the insured's ex-wife Connie.

*RICE V. WEBB*, 287 NEB. 712 (S. CT. MARCH 21, 2014)

Brenda Rice and Dale Rice were married in 2001. In May 2011, Brenda filed for divorce.

Brenda and Dale entered into a property settlement agreement, and on August 8, 2011, the district court filed a decree dissolving their marriage and incorporating the terms of the property settlement agreement, which included the provision described above.

Dale died shortly thereafter. At the time of his death, Dale owned two life insurance policies. Brenda was still listed as the primary beneficiary on both policies.

After Brenda filed claims for the proceeds of the life insurance policies, the personal representative of Dale's estate filed a motion to enforce the divorce decree and to require Brenda to withdraw her claims to the policies' death benefits. The personal representative argued that under the property settlement agreement, Brenda had given up all rights and no longer had any legal claim to the policies.

Brenda argued to the district court that she and Dale had intended to leave each other the beneficiaries of their respective life insurance policies, despite the language of the property settlement agreement.

After hearing evidence, the district court ruled in favor of the executor of Dale's estate. It ordered Brenda to withdraw her claims under Dale's life insurance policies. Brenda appealed.

The Supreme Court of Nebraska decided that Brenda had unambiguously given up her beneficiary rights in the life insurance policies under the terms of the property settlement agreement, affirming the district court's decision. It ordered her to withdraw her claims for death benefits from her ex-husband's life policies.

## **OTHER COMMON DIVORCE-RELATED BENEFICIARY ISSUES**

In addition to situations where the insured's ex-spouse is left as the named beneficiary of life insurance or other account, courts are sometimes called on to sort out the proper beneficiary in other divorce-related situations.

***Restriction on Policy Owner's Ability to Designate New Spouse***

In some situations a beneficiary who is a relatively new spouse of a decedent may end up in litigation with the family over the proper division of life insurance death proceeds.

*UNUM LIFE INSURANCE COMPANY V. SIDES*, NO. 1:12-CV-4400-RWS  
(N.D. GA, NOV. 13, 2014)

Chris Sides purchased a life insurance policy in 1998 from Unum, naming his then-wife Casey Sides as the sole beneficiary. In 2007, Chris and Casey divorced and entered into a marital settlement agreement. As part of the agreement, Chris agreed to maintain \$250,000 of life insurance coverage naming his minor children as beneficiaries in trust with Casey as trustee.

In 2010, Chris submitted a change of beneficiary form, naming his new wife, Brooke Sides, as the beneficiary. In 2012, Chris died.

Brooke Sides, Casey Sides, and Michelle Smith (as guardian *ad litem* of the minor children) all made claim for the life policy's death benefit.

The court found that Georgia law did permit the possible imposition of a constructive trust on life insurance death proceeds but that Georgia law required "the policy to be identified in the decree" to compel payment to such a trust. The court examined the divorce decree and found that no specific policy was referred to. In the absence of a specific policy reference, the court refused to impose a constructive trust on behalf of the insured's children. It ordered the death proceeds to be paid to Brooke.

*HITES V. AAA INSURANCE CO.*, NO. 12-034001-CK (CT APP MI, NOVEMBER 13, 2014)

Darrell Means owned a \$150,000 ten-year term policy on his life, which had been issued by AAA Insurance Company prior to the time of his divorce from his wife Constance. The 2003 divorce consent judgment provided that Darrell name Constance irrevocable beneficiary of \$25,000 of "his life insurance policy with AAA."

The AAA term policy lapsed in 2008. Later that year Darrell purchased a new term life policy with the face amount of \$50,000, naming his new wife, Linda Means, as the sole beneficiary.

Darrell died in January 2013. His ex-wife Constance contacted AAA to claim \$25,000 of death proceeds but was told that Darrell's old policy had lapsed and that he had purchased a new policy naming Linda the beneficiary. Constance sued in state court to claim her portion of the death proceeds. The court ruled in Linda's favor because the insured no longer owned the policy referenced in the decree at the time of his death.

### ***Federal vs. State Law***

In some cases—especially those related to employment—federal law may supersede state rules with regard to ex-spouses as beneficiary.

#### ***EGELHOFF V. EGELHOFF, 532 U.S. 141 (2001)***

David Egelhoff was married to Donna Egelhoff, and during that time he designated her as the beneficiary of a life insurance policy and pension plan provided by his employer. These benefits were covered by federal ERISA rules.

David subsequently divorced his wife. Shortly after the divorce had been finalized, he was killed in a car accident. Prior to his death, David did not change the beneficiary of his pension or life policy. His children from a previous marriage filed suit against their stepmother for the life insurance and pension benefits from their deceased father.

Washington law provides that an ex-spouse beneficiary designation is revoked immediately upon divorce. However, under ERISA, this was not the case.

The U.S. Supreme Court ultimately decided that ERISA rules preempted the state law. Since the designation of Donna as beneficiary of the life policy and pension was valid, it ordered those benefits to be paid to David's ex-wife.

#### ***HILLMAN V. MARETTA, 133 S. CT. 1943 (2013)***

Warren Hillman was a retired employee of the federal government. He married Judy Maretta in 1989. They divorced in 1998. Hillman had designated Maretta as his federal life insurance (FEGLIA) policy beneficiary in 1996.

Hillman later married Jackie in 2002. He died in 2008. In his will he had "left everything" to his wife Jackie. He did not change the beneficiary designation

After Warren Hillman's death, Maretta claimed and was paid the life insurance policy death benefit of about \$125,000. Jackie Hillman sued Maretta to recover the benefits under the Commonwealth of Virginia statute that revoked an ex-spouse beneficiary designation after a divorce.

The U.S. Supreme Court ruled that FEGLIA was governed by federal law rather than state law. FEGLIA rules included no automatic revocation of an ex-spouse as beneficiary. Since the federal rule held that the actual beneficiary designation was dispositive, ex-wife Maretta was entitled to the life insurance death proceeds.

## **CONCLUSION**

These state laws and cases underscore the importance of doing a beneficiary review as soon as possible after a client's divorce. Financial professionals should encourage their clients to touch base after a life event—such as a divorce, marriage, birth of a child, or the death of a family member—occurs.

Some state laws automatically prevent ex-spouses from claiming shares from a decedent's estate or trust. Other states have no such provisions. The laws of each state also differ with regard to how spouse beneficiaries are treated after the parties divorce. The rules with regard to an ex-spouse's property rights after divorce are inconsistent between states and may not even be logically consistent within a particular state.

Life insurance professionals need to be able to advise their clients as to whether beneficiary designations naming ex-spouses will be honored under the laws of their clients' states of residence. Because of potential uncertainty, a change of beneficiary designation after divorce is almost always the best course of action.

Appendix

State	Divorce Rule?	Source	Comments
AL	Yes	<a href="#">Alabama Code Title 30. Marital and Domestic Relations § 30-4-17</a>	Enacted in 2015.
AK	Yes	<a href="#">Alaska Statutes Title 13, Chapter 12, Section 804</a>	
AZ	Yes	<a href="#">Arizona Revised Statutes §14-2804</a>	
AR	No	<a href="#">Joey Kent v. US Able Life, 141 S.W.3d 895 (2004).</a>	
CA	No	<a href="#">California Probate Code Section 5040</a>	Life insurance specifically <i>excluded</i> from scope of revocation statute.
CO	Yes	<a href="#">Colorado Revised Statutes Section 15-11-804</a>	
CT	No	<a href="#">Connecticut General Statutes 45a-257</a>	Cited statute describes limited ways in which a will can be revoked.
DC	No	<a href="#">McLaughlin v. Hartford Life and Annuity Ins. Co., Case No. 17-cv-500 (CRC) (Dist. DC 2017)</a>	
DE	No	<a href="#">Delaware Code Title 12, Chapter 2, Section 209</a>	Cited statute limits automatic divorce revocation to wills.
FL	Yes	<a href="#">Florida Statutes Section 732.703</a>	
GA	No	<a href="#">Georgia Code Section 53-4-49</a>	Cited statute limits automatic divorce revocation to wills.
HI	<i>Maybe</i>	<a href="#">Hawaii Revised Statutes Probate Code Section 560:2-804</a>	<i>Reciprocal</i> beneficiary designations revoked by divorce. Also, ex-spouse revoked as beneficiary from government retirement plan under HI Rev Stat § 88-93.
ID	Yes	<a href="#">Idaho Uniform Probate Code Section 15-2-804</a>	
IL	No	<a href="#">760 ILCS 35/0.01</a>	Cited statute limits automatic divorce revocation to wills, trusts, and POAs.
IN	Yes	<a href="#">Indiana Code Section 32-17-14-23</a>	
IA	Yes	<a href="#">Iowa Code Section 598.20A</a>	
KS	No	<a href="#">Kansas Statutes Section 59-610</a>	Cited statute limits automatic divorce revocation to wills.
KY	No	<a href="#">Kentucky Revised Statutes Section 394.092</a>	Cited statute limits automatic divorce revocation to wills.
LA	No	<a href="#">Louisiana Civil Code Section 1608</a>	Cited statute limits automatic divorce revocation to wills.

State	Divorce Rule?	Source	Comments
MD	No	<a href="#">Painewebber v. East, 363 Md. 408, 768 A.2d 1029 (2001)</a>	
MA	Yes	<a href="#">MA General Laws Part II Title II Chapter 190B Article II Sec. 2-804</a>	
MI	Yes	<a href="#">MCL 552.101</a>	
MN	Yes	<a href="#">Minnesota Statutes Sec 524.2-804</a>	
MS	No		Bill introduced to legislature in 2017 to change the rule.
MO	Likely No	<a href="#">MO Rev Stat § 461.051</a> and <a href="#">MO Rev Stat § 461.073(6)</a>	
MT	Yes	<a href="#">MT Code § 72-2-814</a>	
NE	Yes	<a href="#">Nebraska Revised Statute 30-2333</a>	Current law became effective in 2017.
NV	Yes	<a href="#">NV Rev Stat § 111.781</a>	
NH	No	<a href="#">NH RSA 551:13</a>	Cited statute limits automatic divorce revocation to wills.
NJ	Yes	<a href="#">NJ Rev Stat § 3B:3-14</a>	
NM	Yes	<a href="#">NM Stat § 45-2-804</a>	
NY	Yes	<a href="#">New York EPT § 5-1.4</a>	
NC	No	<a href="#">North Carolina General Statute § 31-5.4</a>	Cited statute limits automatic divorce revocation to wills.
ND	Yes	<a href="#">North Dakota Century Code Section 30.1-10-04</a>	
OH	Yes	<a href="#">Ohio Revised Code Chapter 58 Section 5815.33</a>	
OK	Yes	<a href="#">Oklahoma Statutes §15-178</a>	
OR	No	<a href="#">Prudential Ins. Co. v. Weatherford, 49 Or.App. 835 (OR App. 12/15/1980)</a>	ORS 107.121 provides only that a divorce decree <i>may</i> revoke an ex-spouse as beneficiary.
PA	Yes	<a href="#">Pennsylvania Code Title 20 Section 6111.2</a>	
RI	No	<a href="#">STRAUSS v. MALLICOAT, C.A. No. PC-2013-3439 (2014)</a>	Bill introduced in 2018 to change rule.
SC	Yes	<a href="#">SC Code § 62-2-507</a>	
SD	Yes	<a href="#">South Dakota Codified Laws Section 29A-2-804</a>	
TN	No	<a href="#">T.C.A. § 32-1-202</a>	Cited statute limits automatic divorce revocation to wills.
TX	Yes	<a href="#">Texas Estate Code § 123.151</a>	
UT	Yes	<a href="#">Utah Code 75-2-804(2)</a>	
VT	No		

<b>State</b>	<b>Divorce Rule?</b>	<b>Source</b>	<b>Comments</b>
WA	Yes	<a href="#">RCW 11.07.010(2)(a)</a>	
WV	No	<a href="#">West Virginia Code Section 41-1-6</a>	Cited statute limits automatic divorce revocation to wills.
WI	Yes	<a href="#">Wisconsin Statutes Section 854.15</a>	
WY	No	<a href="#">WY Stat § 2-6-118</a>	Cited statute limits automatic divorce revocation to wills.