

ESTATE PLANNING NEWSLETTER

Do You Really Know Who Your Beneficiaries Are?

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When we ask clients this question, their first response is often quick and affirmative. However, we frequently discover through the process that their beneficiaries on life insurance and retirement accounts are not who they think they are, nor are they the intended recipients of the property.

One of the most common misconceptions we see is how property passes at someone's death. Accounts that have beneficiary designations, which include life insurance, retirement accounts, transfer on death accounts (TOD) and payable on death accounts (POD), pass to the beneficiary or beneficiaries named on the beneficiary designation form for that account regardless of what your will or trust says. So, for example, if my will says that everything passes to my spouse at my death, but my beneficiary form on my life insurance names my children as beneficiaries, my life insurance proceeds

pass to my children and not to my spouse.

The recent Supreme Court case of Kennedy v. Plan Administrator of DuPont highlights the unintended results that may occur if your beneficiary designations are not reviewed periodically. In this case, William Kennedy named his wife, Liv, as the sole beneficiary of his pension and retirement savings plans at DuPont. When the couple later divorced, the qualified domestic relation order provided that Liv gave up her rights to receive any benefits from William's pension and retirement plan. Unfortunately, however, the court order was never submitted to DuPont and the beneficiary was never changed.

When William later died, DuPont paid out the plan benefits to his ex-wife, Liv. Their daughter, Keri, was appointed as executor of William's estate and filed suit claiming that the estate should receive his retirement benefits because

the domestic relations order clearly provided that Liv had waived any interest she might have in those benefits. The Supreme Court upheld the ruling of the Fifth Circuit in saying that DuPont properly paid the benefits to Liv and that Liv was entitled to the pension and retirement funds even though the parties were not married at the time of the William's death and the domestic relations order clearly provided otherwise.

The moral to the story is that the beneficiary designation governs. Thus, it is very important that you know who is named on your beneficiary forms so that your property goes to the beneficiary or beneficiaries that you intend for it to go to. It is clear that William did not intend for his benefits to go to his ex-wife instead of his daughter, but the Supreme Court held that the beneficiary designation governed and that DuPont properly paid the benefits to Liv.

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With that in mind, here are some tips and common problems to watch out for with your beneficiary designation forms:

1. Do you know where the form is? Generally, employers maintain records of the form, but if they cannot find their form when the time comes, the burden may be on you to produce a copy of the form.

2. Is the form up to date? Changes in your life may require you to review the forms periodically. If you have had a

recent marriage, divorce, birth or death in your family, it is important to review your beneficiary designations. And remember, your will does not change who the beneficiary is on that account or insurance policy.

3. Do you have a contingent beneficiary named? If the person named dies before you or is involved in a common accident with you, you may not know who the benefits will go to if you do not name a contingent

or secondary beneficiary.

4. Have you named a minor as a beneficiary? Minors cannot legally hold title to property, including these benefits. If you have named a minor, a guardianship may have to be established and administered through the Probate Court for these funds.

If you have questions regarding your beneficiary designations and how they factor into your estate plan, please contact our office.

NEW WYOMING LLC LEGISLATION

As many of you know, we frequently recommend and implement Wyoming LLCs in the estate plans that we prepare for asset protection and other reasons. Wyoming is one of the best states in the nation for asset protection for limited liability companies, or LLCs. In Wyoming, a creditor's exclusive remedy against a debtor is a charging order. This means that the most a creditor could reach is the income stream or distribution stream out of the LLC. The creditor cannot reach the under-

lying assets of the LLC. Additionally, the manager of the LLC cannot be forced to make a distribution so the manager has leverage against a creditor even if a charging order is obtained because the manager can elect not to make any distributions.

The new legislation extends this protection to a single-member LLC, which means that Wyoming is the first state in the country to provide that the charging order is the exclusive remedy even for a single mem-

ber LLC. Finally, the new legislation confirms that a judgment creditor has no other rights, whether legal or equitable, except for the charging order.

Wyoming LLCs are one of many strategies we discuss with clients concerned about asset protection, but this new legislation makes these entities even more favorable for asset protection. If you would like to learn more about asset protection, please contact our office.



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