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GENERAL NEWS

Recent Case Highlights Concerns for Naming Revocable Trust as Life Insurance Beneficiary

A recent controversial opinion from Florida's 1st District Court of Appeal highlights a concern for those who have named their revocable trusts as beneficiaries of their life insurance. The case is [Morey v. Everbank](#) (2012 WL 3000608 (Fla. 1st DCA July 24, 2012) – and 37 Fla.L.Weekly D1739). In light of the [Morey](#) case, if you have a Florida revocable trust plan and you have life insurance, you should check to see if your trust is named beneficiary of the life insurance. If so, you should contact our Firm to discuss options to change the beneficiary designation to more clearly protect the death benefits from the claims of your creditors.

Case Summary

The [Morey](#) case held that life insurance proceeds payable to the trustee of a decedent's revocable trust were available to satisfy the claims of the decedent's creditors as a result of the express (and typically form) language in his revocable trust directing that the trustee pay all of the debts and expenses of the decedent's estate prior to making distributions.

Under Florida law (section 222, Florida Statutes – "FS" – which describes exemptions from creditors) during your lifetime, life insurance policies are generally exempted from the claims of your creditors. This exemption normally passes to your beneficiaries after your death. There are a number of pertinent statutes, which state that insurance proceeds payable to named beneficiaries other than the insured's estate should pass free of the claims of creditors, while insurance payable to the estate is subject to administration expenses and creditors claims.

FS 222.13(1) provides in part:

Whenever any person residing in the state shall die leaving insurance on his or her life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise.

However, FS 222.13(1) also provides:

Whenever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrator or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes....

The law on life insurance and beneficiaries in the context of estate plans for clients who don't have revocable trusts (i.e. clients who have will plans) has been fairly clear for a long time.

However, the [Morey](#) case highlights the new confusion over the impact of naming a revocable trust as beneficiary. Most estate planning practitioners felt that naming a revocable trust did not subject the insurance proceeds to creditors' claims the way naming an estate did. This conclusion was based on provisions in the probate and trust code, particularly FS 733.808(4), which provides in part that:

Death benefits ... unless paid to a personal representative ... shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required by a [revocable] trust ... to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

When all of the statutes were read together, most practitioners concluded insurance paid to the estate was subject to creditors' claims while insurance paid to a beneficiary (even if such was the decedent's revocable trust) was not subject to creditors.

However, the holding in [Morey](#) now indicates that life insurance proceeds payable to a revocable trust may be subject to the claims of the deceased insured's creditors if the trust includes a provision that the trustee should use trust assets to satisfy debts and expenses of the decedent's estate (as virtually all revocable trusts likely say). Thus, if [Morey](#) is not over-ruled, clients should not anticipate avoiding creditors by paying life insurance to a revocable trust.

Conclusion

As a result of the holding in [Morey](#), all clients with revocable trusts and life insurance should review their beneficiary designations with their life insurance professional advisors. Then they should contact us to confirm the status of their beneficiary designations and discuss their options for making changes. Some clients will have no concerns for creditors and will prefer to leave the beneficiary designations alone. Other clients will name the individual or trust beneficiaries under the revocable trust plan as the beneficiaries of the life insurance. If, for example, the revocable trust passes on your death into trusts for the benefit of your children, then the trusts for your children under your revocable trust can be named as the beneficiaries directly on the life insurance. That should avoid the [Morey](#) decision and protect the proceeds from your creditors.

Please do not hesitate to contact us if you wish to discuss these issues.