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Trusts & Estates, Tax & Business Law

GENERAL NEWS

Effective July 1, 2012, a New Florida Statute Clarifies the Impact of Divorce on Assets with Beneficiary Designations

Effective July 1, 2012, a new Florida law (new Section 732.703, F.S.) takes effect concerning beneficiary designations on life insurance policies, annuities, IRAs, 401ks and other employee benefit plans.

Currently, Florida law provides that dissolution or annulment of marriage invalidates provisions in Wills and Revocable Trusts for the benefit of the ex-spouse. Thus, any provision in a Will or Revocable Trust purporting to leave assets to an ex-spouse (assuming the Will or Trust provisions were executed prior to the dissolution or annulment of the marriage) will be treated as void. Essentially, the current statutes treat the ex-spouse as if she/he died at the time of the dissolution of the marriage or annulment, unless the Will, Revocable Trust, or final judgment (which might incorporate terms of a marital settlement agreement) provide otherwise.

As a result, if married couples have Wills leaving their estates to the survivor, and if they divorce, and if one spouse dies without ever changing the Will, that ex-spouse does not inherit under the deceased's Will. Instead the Will is read as if the ex-spouse predeceased. The same is true for Revocable Trusts.

Until now, however, Florida law did not have a similar provision impacting beneficiary designations on non-probate or non-trust assets. Thus, until now, it was possible that the provisions of a Will for an ex-spouse would be void, but a multimillion dollar life insurance policy might still pass to the ex-spouse because the deceased never changed his Will and beneficiary designation. As one would imagine, this dichotomy in the law led to a great deal of litigation. In fact, the Crawford v. Barker case made its way to the Florida Supreme Court in 2011 on this issue, holding that absent a clear statement in a marital settlement agreement as to who is or is not to receive the death benefits of a life insurance policy, the courts should simply look at the beneficiary designation.

Of course, clients who went back to see their estate planning attorneys after their divorce hopefully avoided these issues by revising their Wills, Trusts and beneficiary designations; however, many divorced spouses never bothered to seek counsel.

This new statute is welcome relief for divorced clients who never went back to see their estate planning attorneys, or even those who did but never "fixed" their beneficiary designations.

Substantive Changes:

Under the new law, after July 1, 2012, if a beneficiary designation is made prior to the owner's death on an employee benefit plan or other similar non-probate asset (see the list below), the designation is voided when the marriage is terminated (by divorce or annulment), unless an exception applies. The new law applies to:

Life insurance policies, qualified annuities or similar tax deferred contracts held within an employee benefit plan or tax-qualified account;
Life insurance policies, qualified annuities or similar tax deferred contracts not held within an employee benefit plan or tax-qualified account;
Employee benefit plans;
Individual Retirement Accounts (IRAs);
Pay-on-death accounts; and
Securities or other accounts registered in a transfer-on-death form.

There are several exceptions to the new law. The statute does not void a beneficiary designation:

To the extent that federal (or other state) law provides otherwise;
To the extent the designation of the former spouse was irrevocable under applicable law;
If the governing instrument is signed by the decedent after the judgment is entered and the governing instrument expressly provides that the asset will be pa
to the former spouse;
If a court order required the decedent to acquire or maintain the asset for the benefit of the former spouse or children of the marriage or if the court order pr
the spouse did not have the right to unilaterally terminate or change the beneficiary (i.e. if the marital settlement and final judgment require the ex-husb
maintain insurance on his life payable to the ex-wife, then until the agreement or order are no longer binding, the beneficiary designation in favor of the ex-w
be valid);
If the decedent remarries the individual whose interest would have been revoked and they remain married until the decedent's death; and
If the asset is held in 2 or more names in such a fashion where the death of one co-owner vests ownership of the asset in the surviving co-owner(s) (i.e. the s
does not apply to accounts held as joint tenants with rights of survivorship).

Note: The new statute does not apply to assets held as joint tenants with rights of survivorship (see f, above). So account titles still must be examined after divorce, and this exception might still present a trap for the unwary.

Procedural Provisions:

In addition to the new substantive legal issues, the statue provides payment procedures for the custodians of assets (payors) in and out of employee benefit plans to follow.

For payors of life insurance policies, qualified annuities or other tax-deferred contracts held within employee benefit plans, payors of employee benefit plans, and custodians of IRAs, if the governing instrument does not explicitly specify the relationship between the beneficiary and the decedent, or if the governing instrument explicitly provides that the beneficiary is not the decedent's spouse, then the payor may pay out to the beneficiary and not be liable for such payments. On the other hand, if the governing instrument specifies the primary beneficiary explicitly designated in the governing instrument is the decedent's spouse, then the payor must examine a death certificate prior to making any payment, and in certain circumstances the payor must obtain an affidavit (the terms of which are in the statute) in order to avoid liability for a payout.

In the case of pay-on-death accounts, securities or other accounts registered in transfer-on-death form, and life insurance, annuities or similar contracts not held within an employee plan or tax-qualified retirement account, the payor is not liable for making any payment on account of the decedent's death to the named

beneficiary.

While this immunity for payors of accounts not held in employee benefit plans or tax-qualified plans was likely necessary to garner legislative support from the banking and insurance lobbies, such immunity likely increases the chances of future litigation. The “rightful” beneficiaries (due to the ex-spouse legally being treated as predeceased) may have to sue and chase a “wrongful” ex-spouse who runs to close out one or more accounts that are subject to this new law.

Conclusion:

Because of the importance of this new statute and the exceptions to it, all Florida residents who are divorced (whose marriages were terminated by dissolution or were annulled) and any who are in the process of divorcing are urged to promptly review their estate plans, their beneficiary designations and the titling of their assets, with the assistance of counsel.

The Act

To read the full Act, you can use this link:

http://laws.flrules.org/files/Ch_2012-148.pdf

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