



DESIGNATED BENEFICIARIES – WHO GETS WHAT?

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By Dorothy Hagel

Most people are aware that beneficiaries can be named directly on certain assets. Life insurance and Registered Retirement Savings Plan (RRSP) are the most common examples. Sometimes the beneficiaries named directly on these special assets are the same individuals that would be named as beneficiaries in the will. For example, spouses can be named as the beneficiaries for life insurance *and* the sole beneficiaries of the estate under the will. Sometimes, however, the beneficiaries named directly are different than these named in the will and the result of such discrepancy can be quite unexpected.

What happens to the life insurance policy that named your mother as beneficiary because you bought the policy before you were married? Will this policy be left to your spouse because your will stipulates that your entire estate is to pass to your spouse? The answer is no. Unless the will specifically deals with changing the beneficiary of the life insurance, the gift of the entire estate to the spouse will not apply to the death benefit of the insurance policy. If the beneficiary designation is not changed, the death benefit will be paid out to the beneficiary named in the policy. This is because, certain assets like life insurance and RRSPs pass *outside* of your estate when a beneficiary is named on the plan and therefore the funds are paid out directly to the named beneficiary, bypassing the directions in the will.

What happens if you divorced your spouse but did not remove him as beneficiary of your life insurance? Will your former spouse receive your life insurance? The answer is yes. Assets like life insurance and RRSPs are given to the named beneficiary, regardless of the relationship between the beneficiary and the deceased. This may lead to complicated litigation because of the unfulfilled obligations towards the new spouse or even minor children that are owed support.

Perhaps in the process of separation from your spouse you signed an agreement stating that your spouse will remain the beneficiary to your life insurance policy. Can you later change the designated beneficiary with the insurance company in breach of the agreement? Even if the insurance company

will allow you to make the change, the former beneficiary can challenge it in Court and will likely be successful because generally, a binding agreement overrides a change in designated beneficiaries.

What Can You Do?

It is important to consider updating your beneficiaries whenever you experience an important change or life event including marriage, birth of a child, separation or divorce, or death. Inconsistent designations may lead to family disputes that end up in Court.

It is also important to consider tax treatment of different assets to assess what would be the net amount received by the beneficiary and how the taxation of the benefit received will affect the funds distributable to these family members, who take under the will. You can designate different people as beneficiaries on different types of assets base on the way these assets are taxed. Your spouse could be the designated beneficiary of your RRSP and received it with little if any tax consequences, while your children receive your life insurance policy so that they can also receive the money free from tax. Many options exist.

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