



Who's Got My Beneficiary Designation ... Or Who Lost It??

Ilene H. Ferenczy

We are seeing situations arise with retirement plans that are likely to become more common in the future. And, we are worried about who will be holding this hot potato when the music stops.

The issue that concerns us is: who is keeping track of participants' beneficiary designations? Over the years, these forms are supposed to be handed out to participants, and participants sometimes return them ... and then what happens? When plans and participants were younger, it is likely that no one paid these important forms much attention – after all, no one was going to die, right?! But, with the workforce aging and plans maturing, it will be increasingly important that designations are retained somewhere so that the participant's named beneficiaries get what is coming to them.

Who is responsible to retain completed beneficiary designations?

Most plan documents provide that the Plan Administrator (usually the sponsoring Employer) is responsible for obtaining and retaining beneficiary designation forms. However, in these days of electronic enrollment processes, it is possible that many employers believe that the plan's recordkeeper or third party administrator (TPA) has this paperwork under control. Maybe they do and maybe they don't. More often than not, they don't.

Why the conundrum?

For most plans, the law requires that the spouse be the beneficiary of at least a partial death benefit unless he or she consents to naming someone else as the beneficiary. In particular, most 401(k) plans are required to default the beneficiary to the spouse. Therefore, many married individuals will fail to complete a beneficiary designation in the reasonable belief that it is not needed if they want their spouse to inherit. Furthermore, while many Plan Administrators or service providers are very careful to have employees enroll in the plan, requiring that a beneficiary designation form be completed and signed is likely not as high a priority.

But time marches on and people's situations change. An unmarried participant gets hitched ... but does not remember to change the beneficiary designation. Married people divorce and

remarry, and the beneficiary designation may not keep pace with those life changes. A common source of a dispute arises when a participant divorces a first spouse with whom he or she had children, and then remarries. Often, the participant intended the children of the first marriage to be the beneficiary, but new spouses usually have rights to retirement plan benefits unless a QDRO has assigned them to members of the earlier family or they consent to another beneficiary ... after the marriage.

If there is a bona fide dispute over who the proper beneficiary is, it is easy for the plan to end up in litigation. This is happening with increased frequency.

Solutions for Plan Administrators.

Here are a few ideas for making sure you have proper beneficiary information when it is needed:

1. **Safely retain copies of beneficiary designations that are provided by participants.** Because of the consent rules, it is possible that a participant has gone to significant effort to make sure that the right people get the death benefit, only to have those efforts voided by sloppy recordkeeping at the plan level. This is important stuff; treat it as such.
2. **Know whose responsibility it is to keep the forms.** If you are the Plan Administrator, it's primarily your responsibility. If a recordkeeper or TPA has taken on the responsibility to retain the designations, make sure that is in that provider's service agreement. If you are a service provider and you are doing this for your clients, make sure they know you are doing it, and then do it well. If you are a service provider and you are NOT doing this for your clients, you should make sure that they understand this.
3. **Give participants new beneficiary designation forms for the Plan as part of the annual open enrollment process.** This will encourage participants to fill out the forms ... and to update them when circumstances change. There is no harm in having a new beneficiary form completed annually.
4. **Provide in the plan document or administrative policies (and in the SPD) that beneficiary designations are effective only when received by the Plan Administrator (or its delegate).** This will avoid potential beneficiaries "finding" forms after the participant's death that are of questionable provenance. However, keep in mind that this requirement makes the Plan Administrator's retention of completed forms even more important.
5. **See if your participants' account statements can be augmented to show who the current beneficiary is.** If that is not possible, perhaps at least the end-of-year statement can include that information, or a separate notification can be provided to each participant once per year.
6. **Keep your ear to the ground.** If you know that participants are marrying, divorcing, having children, etc., you may want to hand them a beneficiary designation form and remind them that their life change may also modify who their benefit goes to on death.
7. **Find out whether your plan provides for automatic revocation of beneficiary designations in favor of a spouse when the parties divorce, and decide whether that is a good thing ... and make sure it is communicated to your participants in the Summary Plan Description.** If a divorce decree promises that all death benefits will continue to go to the spouse, an automatic revocation provision can disinherit the former spouse against all intentions. And, if there was no QDRO, it is possible that neither the participant nor the former spouse would know that.

When a participant dies, you don't want your historically bad recordkeeping procedures to cause more grief for his or her loved ones. Help your participants plan for the future by encouraging them to fill out beneficiary designations, and then make it a priority to keep those forms safe.



FERENCZY
BENEFITS LAW CENTER

ERISA
We are your ^ solution™

Ilene Ferenczy • ilene@ferenczylaw.com | Alison Cohen • acohen@ferenczylaw.com
Adrienne Moore • amoore@ferenczylaw.com | Adriana Starr • astarr@ferenczylaw.com
Tia Thornton • tthornton@ferenczylaw.com | Leah Dean • ldean@ferenczylaw.com

2635 Century Parkway Suite 200, Atlanta, GA 30345
T 404.320.1100 | F 404.320.1105 | www.ferenczylaw.com