

Is it time to review your beneficiary designations?

As important as a will is to the transfer of your assets, it does not necessarily control how *all* of your assets will be distributed to your beneficiaries. You are likely to have designated beneficiaries for specific assets during your lifetime. And just as you review your will, review of your beneficiary choices for these assets is extremely important.

Because distributions under your will are subject to approval by a probate court, these assets often are referred to as “probate property.” Then there are the assets for which you have designated a beneficiary in a separate document and that are not subject to the probate process. This nonprobate property includes property owned in joint name (the family home, bank accounts, etc.) that passes automatically to the other individual joint owner. Similarly, if you have established a trust, you have named an income beneficiary to receive the earnings from the trust’s assets and a remainder beneficiary to receive the assets themselves at some future date.

For purposes of discussion here, we will focus on a nonprobate asset that is particularly important in the estate planning process: your retirement plan assets (company retirement plans, Keoghs and IRAs). Because your retirement plan assets are likely to be substantial, you’ll want to give special attention to integrating them with your will and overall estate planning goals.

Beneficiaries and retirement plan assets

Your employer or the trustee of your retirement plan will have asked you to fill out a form naming a primary beneficiary and, probably, a secondary, or contingent, beneficiary at the time that your account was created. The trustee of your IRA also will have a form for you to fill out.

Generally, if your spouse is not the named beneficiary of at least 50% of your vested account balance in your company retirement plan assets, he or she will have given “spousal consent,” agreeing to the designation of the beneficiary that you have chosen.

If you haven’t revisited the beneficiary designations for your company retirement plan or any of your IRAs in the past few years, you may want to do so—especially if you have divorced, remarried or had children since you became a participant in your company’s

retirement plan. Perhaps you named a charity as your beneficiary. Is the charity still in existence? Is there another charity that you may want to name as a beneficiary of your retirement plan account?

The U.S. Supreme Court speaks on beneficiary designations

How important is it to make adjustments to your beneficiary designations as your personal circumstances change? A landmark U.S. Supreme Court decision issued just a few years ago provides an answer. Husband named his wife the beneficiary of both his life insurance and pension plan. The couple divorced, and two months later Husband died without having changed his beneficiary designations for either his insurance or his pension. Because state law automatically revoked beneficiary designations after a divorce (as it does in many states), the state's Supreme Court said that the money from the two resources went to Husband's children from a prior marriage.

The U.S. Supreme Court, in a 7-2 decision, disagreed with the state court. To pay benefits according to a state law, rather than the individual designated in the plan or insurance documents, would require, potentially, a plan administrator or insurance company to be familiar with 50 different state laws. That result is unacceptable, said the Court, when federal law (the Employee Retirement Income Security Act of 1974) clearly states that payments must be made to a beneficiary who is designated by a participant or by the terms of the plan. Result: The ex-wife was entitled to the insurance and the pension, and the children lost out.

What can you do to prevent this kind of result? One potential solution is to name a trust as the beneficiary of your retirement assets. The trust agreement can name your spouse as the income beneficiary and your children as the remainder beneficiaries. Please feel free to make an appointment for a planning discussion as well as for answers to questions that you may have about this complicated, but important, area of estate planning.

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Any developments occurring after January 1, 2008, are not reflected in this article.