

December 15, 2000 “Divorce can mean beneficiary change”

Imagine going to Probate Court following the death of your spouse.

And, to your surprise, the Court proceeds to change the beneficiary designation of your deceased spouses’ life insurance contract to someone other than you!

Your former spouse, in good faith, made a “contractual” arrangement with a life insurance company to provide for you should he or she suffer an untimely death.

But in 1995 our State Legislature passed a provision that life insurance beneficiary designations which are, supposedly, legally binding can be revoked under a certain circumstance.

This “circumstance” involves 50% of the marriages in Arizona, which are the current odds for divorce.

Whether you think that this is right or wrong is irrelevant as this provision is now a statute and complies with 24 other State probate courts.

Let’s look at an actual case history where such a law was applied.

In 1986 a couple were married in Phoenix, Arizona. The husband had a prior marriage with two minor children.

In 1988 the husband purchased a \$500,000 life insurance policy and named his two minor children from the prior marriage as 50% beneficiaries and his current spouse as 50% beneficiary.

It was agreed upon that this policy would go towards covering child support for his two children and spousal support for his current wife.

During this marriage the husband and wife had two children. However, in 1996 this second marriage ended in divorce as well.

They agreed to minimize legal fees and court costs and obtained “boiler-plate” divorce forms, filled in the appropriate blanks, and filed these papers with the Court.

They did not prepare or submit a written “Property Settlement Agreement,” rather they “orally” agreed between themselves how their marital assets and debts would be divided.

The Arizona Supreme Court issued a simple Divorce Decree, but it did not reference the former husband’s life insurance policy or that his surviving spouse would remain the designated beneficiary.

Then in the year 2000 the ex-husband suffered a heart attack and died.

Soon after the “second” ex-wife made a request for 50% of the proceeds or \$250,000 which was agreed upon for the support of her two children.

However, the life insurance company denied her request, indicating a 1995 change in Arizona law which revoked her status as a beneficiary because she was no longer a spouse.

In fact, this law provided that a Divorce Decree dividing a marital estate served to rescind any property rights made by a divorced person to that person’s former spouse, including any designation as beneficiary in a life insurance policy.

Furthermore, this Arizona Revised Statute (14-2804) has been ruled constitutional.

In the above-mentioned scenario the ultimate beneficiaries were only the children, or his heirs, of the decedent’s former spouses.

And since they were still under-age the ex-wife’s had no access to the life insurance proceeds with which to raise the children.

It further ruled that since the deceased husband had the right to change the beneficiary at any time during the life of the policy that the beneficiary’s rights remained “contingent” and therefore the court reasoned that the beneficiary had no “contractual rights” on which to make a claim.

Even more amazing is the court further ruled that this statute presents a “rational means of achieving the social goal of implementing an insured spouse’s probable intention in the wake of a divorce.”

The bottom line here is that in the event of a divorce put your “verbal” decisions in writing and, possibly, seek legal council.

And as one attorney commented “make sure there is a statement attached to your life insurance contract to the effect that a divorce or annulment of a marriage will not revoke the disposition of property made pursuant to his contract.”