

Designating Beneficiaries

Naming an individual, a trust, or, a company as the one entitled to receive proceeds of death of your life insurance policy (“Policy or Policies”) or the funds in your registered plans (“Plan or Plans”) at death, is called designating a beneficiary. This type of a beneficiary designation is different from making a gift in your Will to a named beneficiary or to a specified class of beneficiaries.

The effect of a beneficiary designation on a Policy or a Plan is that the payment of proceeds or funds is made by the insurer or provider directly to the named beneficiary, bypassing the estate, without involving the executor of your estate. In most provinces the designation can be done by filling out a Beneficiary Designation Form with the Policy or Plan contract, by executing a stand-alone document, or, if properly drafted, in the Will but not as part of the body of the Will that deals with distribution of estate assets. In Quebec, designation of Plans (other than life insurance policies and annuities) must be done in a Will or a marriage contract, which, in the case of the latter, potentially acts as a Will substitute with respect to the designation.

With respect to Policies, there are two kinds of beneficiary designations – revocable and irrevocable. In Quebec, unless a contrary intention is expressed, designation of a spouse or child is deemed irrevocable. In all other provinces, a designation is revocable unless otherwise stipulated. Revocable designations can be changed without the beneficiary’s consent or knowledge. A Policy with an irrevocable beneficiary designation cannot be altered in any way nor revoked without the written consent of the beneficiary or beneficiaries named on that Policy. Policies should be made irrevocable only if required by agreement such as separation, divorce, or shareholders agreements. It is the owner of the Policy, not the life insured (where they are not the same person), who designates the beneficiaries. Often, of course, the life insured is also the owner of the Policy.

Advantages

There are several benefits to using beneficiary designation as part of the overall succession plan. These include the ability to:

- Reduce or eliminate probate tax (in Nova Scotia, British Columbia and Ontario);
- Protect against creditors of the estate (depending on the circumstances);
- Protect against family law claims (depending on the circumstances);
- Maintain privacy;
- Avoid the probate process in court, if any;
- Expedite payment of proceeds, funds, to beneficiaries;
- Equalize beneficiaries with funds outside the estate.

Instead of allowing the property to fall to your estate and into the hands of your executor, a beneficiary designation is one way to transfer part of your wealth after your death while protecting the assets from potential estate creditors, and, reducing probate tax in Ontario, British Columbia, and Nova Scotia. The direct payment to named beneficiaries is more expedient than the distribution of an estate since there is no time delay waiting for the probate process in court or the estate settlement process in Quebec, and, the direct payment is a private matter, not in the public domain.

Enhancing the Estate

A beneficiary designation is one way to provide for your unpaid taxes and other estate debts that may arise after death, or to equalize (compensate) members of the family. Additionally, in the event that there is insufficient liquidity in the estate for other liabilities or gifts, a beneficiary designation outside the estate provides funding without having to sell assets such as real estate. It is important to ensure that both primary and contingent beneficiaries are named so that in any event, the proceeds or funds will not fall to the estate. It is important to keep in mind that while the payment of proceeds of death under Life Insurance Policies does not trigger an income tax liability for the estate, the payment of funds under Plans does, unless the beneficiary is a spouse or a dependent child or grandchild, in which case the tax is usually deferred.

Designating Minors as Beneficiaries

Minor children are often the designated beneficiaries of Policies or Plans. Minor children, however, are not legally authorized to deal with property. While a parent of a minor child is automatically the guardian of the child's person, the parent is not the guardian of a minor child's property. Where the value of the gifted funds exceeds the provincial threshold (e.g. \$25,000 in Quebec, \$10,000 in Ontario), and absent the appointment of a trustee, an arm of the provincial government (e.g. Public Curator, Office of the Children's Lawyer) will be the statutory guardian of the child's property, until the child attains age of majority.

Typically, a Trustee is named in the Will or other document which designates the child as a beneficiary, to manage the child's funds until age of majority, or beyond. The funds must be received by the appointed Trustee on behalf of the child, and kept invested for the child's benefit. Proper documentation of the creation of a Trust for the benefit of the minor child and under what terms the child is to receive distributions, as part of the designation, is critical. Without a

proper Trust document outlining the terms of Trust, there is no ability to access the funds for the child's needs (for example, for sports, camps, orthodontics, music lessons, counseling, education, etc.) other than, in some circumstances, by way of application to court. Furthermore, without terms of Trust there is no authority to hold the funds beyond the age of majority.

Creditor Protection

In most provinces and depending on the circumstances, Policies and Plans which are designated to named beneficiaries (not the estate) are protected from estate creditors. Registered Plans which are not insurance products are protected in the context of bankruptcy with the exception of the contributions made to the Plan in the 12 months preceding date of bankruptcy. In most provinces, insurance products (Plans and Policies) are also protected outside the context of bankruptcy so long as at least one named beneficiary is a spouse, child, parent or grandchild ("creditor protected class") of the owner of the Plan or Policy. With respect to corporately owned Policies and Segregated Funds that are held in a nominee-registered account, protection from creditors may be lost (this may not apply in Quebec).

Other Considerations

In some provinces divorce nullifies appointments of and gifts to a former spouse, made in a Will (this differs in Quebec, depending on the circumstances). However, divorce does not cancel beneficiary designations on Policies and Plans in favour of the former spouse. The designation remains intact and as a result, the former spouse would be entitled to the proceeds or funds, although that may not have been the intention of the deceased. Where a marriage or common-law relationship ends, clients should be advised to make appropriate changes to any beneficiary designations they may have made, in addition to changing their Wills.

Typically, the last document signed which is a valid beneficiary designation trumps previous designations. The onus is on the owner of the Policy or Plan to inform the insurer or provider of any re-designation. Additionally, with respect to life insurance Policies, beneficiary designations govern only those Policies which exist at date the designation is made.

Successor Annuitant versus Beneficiary Designation of Registered Plans

Many clients ask what the difference is between a successor annuitant and a designated beneficiary, with respect to registered plans.

A successor annuitant can only be a surviving spouse, and, only with respect to payments from a RRIF. The effect of a successor annuitant appointment is that the funds are NOT rolled over to the RRIF of the surviving spouse. In the case of a successor annuitant appointment, the surviving spouse “takes over” the existing registered plan (RRIF) account of the deceased. The account itself remains the same and no funds are moved out of the deceased’s account. The name and SIN are simply changed to reflect that of the surviving spouse. The payments will remain calculated on the date of birth used when the account was opened (of the deceased spouse).

All other types of registered plans (including the RRIF) can be designated, either by Form or Will, by naming a beneficiary who is to receive the entire Plan funds. In this case, the funds in the Plan move out of the deceased’s Plan account. Only in the case of a surviving spouse/common-law (or a financially dependent child or grandchild – as defined in the ITA) who elects to fund his/her own RRSP/RRIF plan without cashing out the deceased spouse’s Plan, can there be a rollover (tax deferral) of the deceased’s Plan. In that case, taxes would be payable on the second death. So, in the case of a designated beneficiary, as opposed to a successor annuitant, the surviving spouse may elect to transfer the assets to his/her own RRSP or RRIF. Estate tax receipts will be issued if this option is elected - T4RIF and a 60(l) off-setting contribution receipt in the name of the surviving spouse. If the funds are rolled over to the surviving spouse (either an RRSP or RRIF) the deceased’s RRIF Minimum Payment (or remainder thereof) must be paid out to the surviving spouse first as CRA deems it ineligible for rollover. Where the designated beneficiary is not a spouse/common-law partner (or a financially dependent child or grandchild), income tax on the Plan is payable pursuant to the deemed disposition at death.

Seek Professional Advice

Beneficiary designation regarding registered Plans and life insurance Policies can be complicated. There are differences in provincial laws that govern how designations are to be made. Federal and provincial statutes as well as case law and the Civil Code in Quebec determine the nature and extent of creditor protection, if any, that applies to a Plan or Policy (or its proceeds), whether during lifetime or after death of the owner. It is critical that you consult with a professional in your jurisdiction before making a beneficiary designation on a Plan or a Policy. It is also important to keep a detailed list of Plans or Policies where beneficiary designations have been made in the past, and to review these every few years to ensure that the designations are consistent with your overall estate plan, and that they reflect your current intentions and your current life circumstances.



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