

Beneficiary Designations: A Practical Guide

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BENEFICIARY DESIGNATIONS: A PRACTICAL GUIDE

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1. INTRODUCTORY MATTERS

This paper will look at beneficiary designations firstly from an estate planning point of view and secondly from an estate administration point of view. It will cover a potpourri of quick topics, all of which are intended to offer practical information and a place to start in the event that you run into these situations in your own practice. It will touch on both making and revoking beneficiary designations. Many of the points addressed arose from questions raised by students in the Wills Module of the CPLED program and by lawyers who are new to Wills and Estates law.

A. THE BASICS

A beneficiary designation is made when the owner of a financial instrument or an insurance policy states in writing who is to receive the proceeds of that instrument or policy on the death of the owner. Usually the designation is made at the time the instrument or policy is purchased. The transaction is often done with a banker, financial planner or insurance agent and is often already in place by the time your client approaches you for estate planning advice. Existing beneficiary designations can be revoked or changed using the client's Will or even a Separation Agreement, as we will discuss in this paper.

The beneficiary designations that estate-planning lawyers encounter most often are those that have been made on life insurance policies and on RRSP's and RRIF's. However, a beneficiary designation can also be made on a pension plan, profit-sharing plan, trust or annuity¹, as well as on other financial instruments such as LIRA's and segregated funds.

¹ *Trustee Act* of Alberta, R.S.A. 2000, c. T-8, s. 47(2)

Clients have dozens of reasons for choosing to make beneficiary designations. As an estate-planning advisor, you need to be fully familiar with the client's goals and intentions with respect to these designations so that you are able to spot potentially problematic situations and so that you do not create any new problems for the client. Some examples of the variety of reasons clients have for making beneficiary designations are:

- a. Annie designates her husband as the beneficiary of her RRSP because the proceeds of the RRSP can be rolled over to him on Annie's death without losing their tax-deferred status. If the proceeds were to be paid to (almost) any other beneficiary, the RRSP would be deemed to have been cashed the minute before Annie died and would therefore be subject to taxation.
- b. Phan owns several pieces of real property and designates his estate as the beneficiary of his life insurance policy because he wants to create some cash for his estate. Phan will receive a capital gains exemption for the property that is his principal residence, but not for his other properties. Therefore his estate is likely to be hit with a significant capital gains tax bill. The cash would be used to pay the capital gains tax that will arise when the real properties are disposed of on Phan's death.
- c. Amelia is in her second marriage and designates the children of her first marriage as the beneficiaries of her life insurance policy. Because Amelia's home is jointly owned with her second husband, it will not form part of her estate. She has children from the second marriage as well but feels that their father will look after them. Amelia is concerned that she does not have much to leave to the children of the first marriage and wants to make sure, by buying the life insurance policy, that she has something to leave them.
- d. Frank is divorced and designates his former wife as the beneficiary of his life insurance policy. Frank is required to set up and maintain this policy to