Act Now To Replace A Divorced Spouse As Beneficiary Of Your Retirement Plan Benefits

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Many states, including New Jersey, have laws stating that divorce automatically revokes the designation of a spouse as a beneficiary of certain kinds of assets passing outside the Will. However, divorce is not effective to revoke the ex-spouse as beneficiary of a deceased spouse's 401(k) plan or any other type of retirement plan subject to the federal law known as the Employee Retirement Income Security Act of 1974 ("ERISA").

The U.S. Supreme Court has ruled that ERISA preempts such state laws revoking the designation of the ex-spouse as plan beneficiary on divorce, and, if ERISA governs the 401(k) or other retirement plan, the ex-spouse will have the right to the plan proceeds. See Kennedy v. Plan Administrator For Dupont Savings & Investment Plan, 555 U.S. 285 (2009). In Kennedy, an employee participated in an ERISA employee pension benefit plan and designated his wife as the sole beneficiary. The couple subsequently divorced, and as part of the divorce decree the wife agreed to waive her interest in her husband's pension plan. However, the husband died without amending the pension plan documents to replace his ex-wife as the designated beneficiary. The husband's estate claimed a right to the plan proceeds, citing the ex-wife's waiver. The plan administrator, however, relied on the husband's pre-divorce designation form and paid the funds to the ex-wife. The husband's estate then sued the plan administrator to recover the benefits. The Supreme Court held that the ex-wife's waiver "did not constitute an assignment or alienation rendered void [by ERISA's anti-alienation provision]" and therefore was not invalidated by ERISA. Kennedy, 555 U.S. at 297 (emphasis added). Nonetheless, the Supreme Court declared that a plan administrator is "obliged to act 'in accordance with the documents and instruments governing the plan,'" and that "ERISA provides no exemption from this duty when it comes time to pay benefits." Id. at 300 (quoting 29 U.S.C. § 1104(a)(1)(D)). Thus, although the ex-wife had waived her right to the pension, the Supreme Court concluded that the plan administrator "did its statutory ERISA duty by paying the benefits to [the ex-wife] in conformity with the plan documents.

As illustrated above in Kennedy, what often happens is that a participant in a 401(k) or other ERISA governed retirement plan designates his or her spouse as the beneficiary, subsequently divorces but forgets to change the beneficiary designation, and then dies. What is also relatively common is for the couple to enter into a property settlement agreement prior to divorce in which each spouse waives any interest in the other spouse's retirement plans. The Third Circuit Court of Appeals, the federal appellate court covering New Jersey, faced the situation where the retirement plan administrator followed the pre-divorce beneficiary designation and paid out the retirement plan proceeds of a 401(k) plan to the decedent's ex-spouse, even though the ex-spouse waived her rights to the proceeds in the divorce. The Court ruled, however, that the decedent's estate could sue the ex-spouse to enforce the waiver and collect the proceeds from her. See Estate of William E. Kensinger, Jr. v. URL Pharma, Inc., 674 F.3d 131 (2012).

These cases highlight the importance of taking proper and prompt action to change the beneficiary of an ERISA governed retirement plan and to review other estate planning documents following a divorce, or else face possible litigation to correct the oversight.