DIVORCES CAN GET MESSY: WHAT HAPPENS WHEN A PARTICIPANT DIES AFTER A DIVORCE?

(Supreme Court Decision: Kennedy v. DuPont)

One of the first things a new retirement plan participant is normally asked to do is to name a beneficiary to receive his/her plan benefits if he/she dies before collecting them. What would ordinarily be a fairly straightforward process is complicated by Congress who has passed several laws designed to protect the interests of surviving spouses. If the new participant wants to name his or her spouse, the matter is simple. If someone else is named, it gets more complicated, and the spouse must agree to have someone else named as the participant's beneficiary. Not surprisingly, a number of law suits have been adjudicated over beneficiary issues in retirement plans. The Supreme Court recently handed down their decision (Kennedy v. DuPont) concerning one of these problems: a spouse is named beneficiary, a divorce happens later, the participant does not change the beneficiary after the divorce and then dies.

The Facts:

Mr. Kennedy became a participant in a retirement plan offered by DuPont, his employer, in 1974. He designated his wife as his beneficiary. Twenty years later, the Kennedy's divorced and the divorce decree stated that Mrs. Kennedy was divested of all rights concerning the DuPont plan. However, Mr. Kennedy did nothing to change or update his plan beneficiary designation and when he died (unmarried) in 2001, the former Mrs. Kennedy remained as his beneficiary. The DuPont plan paid Mrs. Kennedy the benefit and Mr. Kennedy's Estate sued for payment, claiming she had waived her rights to benefits during the divorce process.

The Decisions:

The Court considered two issues in this case. The **first** has to do with whether a divorce decree that does not satisfy the requirements for a Qualified Domestic Relations Order can constitute a waiver of a beneficiary's rights to plan benefits. They found that the decree could constitute a waiver, because a waiver is neither an assignment of benefits nor a transfer of benefits. **Second,** the Court then examined whether a waiver can be effective for a plan when it is not consistent with the specific plan provisions.

The DuPont plan had specific provisions for a beneficiary to waive benefits and for a participant to change beneficiaries. Mrs. Kennedy did not follow the waiver procedures, and Mr. Kennedy made no attempt to change his beneficiary. The Court decided that plan administrators should be able to operate their retirement plans by following the terms of the written plan document. The plan administrator, therefore, was not obligated to determine

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whether a waiver had occurred because the plan specifies a procedure for a waiver and that procedure was not followed. Likewise, since Mr. Kennedy took no action to change beneficiaries, the plan administrator was correct in paying the person he designated as beneficiary. Thus, although Mr. Kennedy probably did not want his ex-wife to receive his retirement benefits, *the plan's decision to pay the ex-wife was upheld*. This decision represents a very positive development for those responsible for administering retirement plans because it relieves a plan administrator from the burden of searching for external documents that could affect the payout of benefits.

Applicable NRS Plan Provisions:

The documents sponsored by NRS avoid the *Kennedy* problem because they contain a provision that revokes the designation of a spouse as beneficiary at the time of any divorce or legal separation. The only exceptions to this provision are where the divorce decree specifies that the ex-spouse retains the status of beneficiary or where the participant makes a beneficiary designation naming the ex-spouse after the divorce. The NRS documents also have provisions setting out specific procedures for spouses to waive their beneficiary rights.

Tip for the Plan Sponsor:

If your document does not automatically revoke a spousal beneficiary following divorce, following up with the participant after the divorce is a good idea. It helps assure that the participant's wishes will be carried out in case of death and avoids potential controversy or even lawsuits.

There are a number of problems and pitfalls associated with administering death benefits in a retirement plan. NRS is here to help!

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