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What Happens When a Life Insurance Policy Designates an Ex-Spouse as the Beneficiary



Sari Gabay | Legal Update

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While married couples may create Last Will & Testaments and forget to change them following a divorce, numerous states have “revocation on divorce” statutes that typically treat a divorce as voiding a testamentary bequest to a former spouse. These revocation on divorce statutes were initially aimed at Last Wills & Testaments and rest on an assumption that the deceased presumably would not wish for an ex-spouse to inherit his or her assets and personal effects. Thus, if no action to change a Will is taken post-divorce, an ex-spouse generally will not inherit under the Will by operation of statute, at least in those states with such laws. But what if an ex-spouse is the designated beneficiary under a life insurance policy? Should a life insurance policy be treated the same as a Will with benefits automatically revoked on divorce?

At least 26 states, including New York, have adopted “revocation-on-divorce” laws so that beneficiary designations to former spouses are revoked upon divorce. Before considering New York law, it is relevant to understand a recent United States Supreme Court decision, *Sveen v. Melin*, 138 S.Ct. 1815 (2018), which involved an ex-wife’s claim under Minnesota law to the death benefits under her ex-husband’s life insurance policy.

Although Minnesota has a revocation on divorce law that provides that “the dissolution or annulment of a marriage revokes any revocable beneficiary designation made by an individual to the individual’s former spouse,” Minn. Stat.. 524.2804 subd. 1 (2016), the ex-wife in *Sveen* argued that the Minnesota law violated the Contracts Clause of the U.S. Constitution because the life insurance policy was purchased before the law was enacted. The Contracts Clause bars states from passing laws “impairing the obligation of contracts.” The lower court ruled in favor of the children but the Court of Appeals for the Eighth Circuit reversed and found in favor of the ex-spouse.

On appeal to the U.S. Supreme Court, the question presented was whether Minnesota’s revocation law could apply to a beneficiary designation that pre-existed the enactment of the statute, without violating the Contracts Clause of the Constitution. The Court reasoned that the law is designed to

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reflect a policyholder's intent and it supplies a default rule that a policyholder can override. Specifically, the Court stated: "[t]he intent of most individuals after a divorce would be to disinherit their ex-spouse." As such, "the insured's failure to change the beneficiary after a divorce is more likely the result of neglect than choice." The Court went on to explain that "the law is unlikely to disturb any policyholder's expectations at the time the contract was signed" because it is unlikely that people are contemplating divorce when they purchase a life insurance policy. Interestingly, the Court pointed out that "*the statute merely provides a default rule. It only applies if a policyholder does not update the beneficiary form.* If the policyholder did update the form, nothing in the law would stop him from going ahead and renaming an ex-spouse after a divorce." (Emphasis added).

Although the majority ruled that the beneficiary to the ex-spouse was revoked upon divorce by operation of the statute, Justice Gorsuch, issued a powerful dissenting opinion, in which he challenged the majority's reasoning. "... the law before us cannot survive an encounter with even the breeziest of Contracts Clause tests. It substantially impairs life insurance contracts by retroactively revising their key term."

What does this mean for New York insureds and beneficiaries? Well, New York Estates Powers & Trusts Law §5-1.4 ("E.P.T.L.") provides for the revocatory effect of divorce on disposition to a former spouse, unless a written agreement provides otherwise. The statute, which was enacted in 2008, explicitly refers to revocation of the "beneficiary designation in a life insurance policy." Several New York cases have applied the E.P.T.L. to hold that a testamentary bequest to an ex-spouse are revoked by divorce. Presumably if a similar issue arises in New York as in *Sveen*, where the Will was written prior to the statute's effective date, it is likely that an ex-spouse may have no claim to the benefits of his or her deceased ex.

As a precaution, insurance brokers and agents in New York should be mindful of life events, such as divorce, and inform clients of New York's default rule of automatic revocation of an ex-spouse as a beneficiary on divorce. While this can be changed by written agreement or by completing an updated beneficiary form, it is best to advise clients to revisit their beneficiary designations upon divorce. It may be that as part of a divorce agreement an ex-spouse remains the beneficiary under a life insurance policy, which should override the statute's automatic revocation provision, but if the form is updated post-divorce, costly estate litigation may be avoided.

**This article is for informational purposes only. For insurance regulatory or other legal advice, please contact Sari Gabay at gabay@gabaybowler.com or (212)941-5025. Thank you to Julia Rachiele of Brooklyn Law School for her research assistance.*



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