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BROOKS & BROOKS, LLP

Estate Planning with Certainty

"Intended" Beneficiaries Scrutiny Required!

Years ago I was contacted by a family of a gentlemen that had been killed in an auto accident. The issue concerned his life insurance policy and whether his divorced spouse should receive the proceeds, or his child. Upon investigation, the facts showed that the decedent had never changed the named beneficiary on his insurance policy after his divorce and the insurance company was contractually bound to pay the death benefits to the only named beneficiary… the ex-wife! I have used that story many times to point out the importance of maintaining proper beneficiary designations.

Some state laws have come to the rescue and provided by law that a divorced spouse will not be considered a beneficiary in such circumstances. Such is not the case in New York as of yet, but apparently this is the case in Virginia. But, is this really a cure for all insurance contracts?

A recent case, *Hillman v. Maretta, 133 S. Ct. 928*, the Supreme Court concluded that a federal statute trumps state law. The Federal Employees' Group Life Insurance Act (FEGLIA) establishes a life insurance program and allows each federally insured employee to designate a beneficiary of the death benefit.

Mr. Hillman married his wife in 1996 and named her as the beneficiary of his FEGLI policy. They later divorced and (to make matters worse) Mr. Hillman married the second Mrs. Hillman. Upon his sudden death in 2008, Mrs. Hillman No. 1 was still named as the beneficiary on his FEGLI policy. As such, No. 1 received over $124,000 of death benefits. Mrs. Hillman No. 2 sued Mrs. Hillman No. 1 (now Ms. Maretta), claiming the benefits under Virginia Law could not be payable to her. Thus the question - *Does Virginia State Law apply or the Federal FEGLI statute?*

The Supreme Court, in a unanimous decision, held that federal law preempts state law and the ex-spouse therefore remained as beneficiary of the decedent's life insurance policy, notwithstanding their divorce.

It is vitally important to be sure that insurance policies, annuity contracts and retirement accounts have the correct beneficiary designations. To assist our clients in this, many times we are able to use a trust as the beneficiary, which helps client maintain "intended" beneficiaries with general estate plan updates without having to deal with every single insurance policy or annuity contact.

Brooks & Brooks, LLP
207 Court Street
Little Valley, NY
14755
Phone: 716-938-9133
Fax: 716-938-6155

www.brookslaw.biz

A Private Client Law Firm

Teddar S. Brooks, Esq.
tsbrooks @brookslaw.biz
Kameron Brooks, Esq.
kbrooks @brookslaw.biz

Free Workshops

February 27, 2014

Bartlett Country Club, Olean
6:30 to 8:30 p.m.

March 4, 2014

Gowanda Community Place
with Andersen Cuddihy, Inc
6:30 to 8:30 p.m.

March 11, 2014

Fredonia Place
with Summit Wealth Management
6:30 to 8:30 p.m.

Beware of Placing a Close Relative in a Pennsylvania Nursing Home

A recent US District Court Case, Eades v. Kennedy, PC Law Offices, W.D.N.Y. No. 12-CV6680L, Dec. 3, 2013, reveals a real concern for any close family member placing a loved one into a Pennsylvania nursing home, whether they are a Pennsylvania resident or not.

In the Eades case, a New York resident placed his wife into a Pennsylvania nursing home. After his wife died, the New York resident and his daughter were sued by the nursing home to collect payment for the nursing home bill. The reason - Pennsylvania has a filial support statute that makes members of the immediate family liable to pay for care of a spouse and/or parent.

The husband and daughter of the deceased spouse sued the law firm, arguing that its collection attempts violated the Fair Debt Collection Practice Act. They also argued that Pennsylvania's Filial Responsibility Law is preempted by a portion of the Nursing Home Reform Act that prohibits a nursing home from requiring a third-party payment guarantee as a condition of admission.

The District Court granted the nursing home attorney's motion to dismiss because the Court did not have jurisdiction over the husband's and daughter's claims. However, the Court added that even if it did have jurisdiction, a debt created by the Filial Support Statute of Pennsylvania does not give rise to a claim under the Fair Debt Collection Practice Act and the Filial Support Statue is not preempted by such act.

In addition to losing in the District Court of Western New York case, the husband and daughter also face a Pennsylvania State lawsuit against them for collection of the nursing home debt. The Pennsylvania statute involved is the "Pennsylvania Indigent Statute," which provides that spouses and children of an indigent person who have the financially ability to "care for and maintain or financially assist" the indigent are responsible to do so. As such, the Pennsylvania Indigent Statute permits a nursing home caring for an indigent person to bring a lawsuit against a spouse and children of the indigent resident for recovery of the cost of care of the indigent parent. This may be all moot if the indigent qualifies for Pennsylvania Medicaid; however, if not, then this can be a real problem for the indigent resident's family.

Obama Administration Proposal to Limit "Stretch" IRA's to Five Years

The Obama Administration has proposed a change to existing laws to limit how long an inherited retirement plan/IRA beneficiary can stretch his or her annual minimum distribution payments in order to save income taxes.

Currently Law. An inherited IRA beneficiary must take minimum required distributions each year, regardless of his or her age. However, the minimum distributions are determined by the beneficiary's life expectancy. Thus, the younger the beneficiary, the longer the IRA can be stretched and the more the IRA has time to grow, tax free. This tends to be a real benefit to beneficiaries for one very practical reason - most are in their late 50's or early 60's when they inherit their parent's IRA. Usually the beneficiary is working and earning the most money he or she has earned in their lifetime and consequently, he or she is already paying a fair amount of income tax. With the ability to stretch the inherited IRA payments out, the beneficiary saves taxes, simple.

Obama Administration Proposal. Non-spouse beneficiaries of retirement plans and IRA's would be required to take distributions over **no more than five years**, with four very specific and limited exceptions. For the majority of the population, the five year maximum payout would apply.

The projected tax revenue the proposal is expected to raise ? 4.911 Billion over 10 years. Yes, that is billion with a "capital B."