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Kennedy v. DuPont -

Who Gets the Money When a Participant Dies After a Divorce?

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The U.S. Supreme Court recently published its decision in *Kennedy v. Plan Administrator for the DuPont Savings and Investment Plan*. The Court considered whether a former spouse waived her rights to survivor benefits under a divorce decree that was not a Qualified Domestic Relations Order. The Court found that, while a former spouse who is a designated beneficiary *could* waive benefits without a QDRO, the divorce decree was ineffective as a waiver in this case because it did not conform with the plan's procedures for a beneficiary to waive benefits.

▲ What Happened?

Mr. Kennedy worked for DuPont and participated in the Savings and Investment Plan. He married in 1971, and in 1974 he designated his wife as beneficiary to receive plan benefits in the event of his death. Mr. and Mrs. Kennedy divorced twenty years later, in 1994. The divorce decree specifically stated that Mrs. Kennedy was divested of all rights related to any retirement plan for Mr. Kennedy through his employer. Mr. Kennedy did not revoke or update his beneficiary designation following the divorce. He died in 2001.

The Plan Administrator paid the benefits to Mr. Kennedy's ex-wife, in accordance with the 1974 beneficiary designation form. Mr. Kennedy's Estate sued the plan for payment, claiming that the ex-Mrs. Kennedy waived her rights as beneficiary under the 1994 divorce decree.

▲ What Did the Supreme Court Decide?

The Supreme Court first considered whether a divorce decree that does not satisfy the requirements for a Qualified Domestic Relations Order could effectively waive a beneficiary's rights. The Court found that since a waiver is not an assignment or transfer of benefits, a waiver could be effective even though it does not satisfy the requirements for a QDRO.

The Court then considered whether a beneficiary's waiver could be given effect where it is inconsistent with the plan documents. In this case, the plan included specific provisions

for beneficiaries to waive or disclaim benefits. The Court found that the ex-wife did not disclaim her rights as a beneficiary by following the plan provisions permitting a disclaimer and found that the divorce decree was ineffective to waive the ex-wife's rights.

There have been lower court decisions holding that a divorce decree could constitute a waiver of benefits if certain legal standards have been met (e.g., the waiver was explicit, knowing, and voluntary). In the *Kennedy* case, the Court stated that plan administrators should be able to administer retirement plans without having to determine whether a waiver has occurred or having to make complicated legal determinations as to whether a waiver is knowing, voluntary, and otherwise sufficient under federal common law. Under ERISA, plan administrators should not have to look beyond the plan documents (including beneficiary designations and waivers or disclaimers if permitted under the plan terms) to determine the beneficiaries who are entitled to receive benefits upon the death of a participant.

▲ Questions Left Open

The Supreme Court left two important questions unanswered, which means that this area will continue to be tricky for plan fiduciaries –

- What is the result where the plan does not provide a method or procedure for a beneficiary to waive or disclaim benefits?
- What is the scope and effect of a waiver that is consistent with the plan documents?

▲ What To Do?

- Review plan beneficiary designations and encourage participants to update their designations as appropriate following a divorce or other life events.

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- Confirm whether your plan includes provisions for automatic revocation of a beneficiary designation naming a spouse when there is a subsequent divorce and, if not, whether it is appropriate to add such provisions. Consider adding language to beneficiary designation forms stating that a beneficiary designation will or will not be treated as revoked if there is a subsequent divorce.
- Confirm whether your plan includes a method or procedure for beneficiaries to waive or disclaim rights to survivor benefits.
- When paying benefits to beneficiaries following the death of a participant, try to confirm whether other parties may claim rights to the benefits. If there has been a divorce or there is a likelihood that more than one party will claim rights to survivor benefits, treat the matter as a formal benefit claim, notify all potential claimants, and follow the plan's claims and appeal procedures.