

Remind Employees to Update Beneficiary Designations

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For multiple covered assets, [section 732.703, Florida Statutes](#), provides, upon dissolution or annulment of marriage, the designation of one former spouse as beneficiary upon death of the insured other former spouse is ineffective. See *State Farm Life Insurance Company v. Stone*, Case No. 5:15-cv-267-Oc-30PRL (MD Fla. October 9, 2015) (allowing interpleader of disputed proceeds of former husband’s life insurance policy until former wife’s conflicting claim with successor beneficiary could be resolved). Similarly, with few exceptions, the statute voids upon entry of a final judgment of dissolution or annulment, any provision of a will that “affects” a former spouse. Courts interpret “affects” broadly, as the court did in *Carroll v. Israelson*, 169 So. 3d 239, 243 (Fla. 4th DCA 2015) (followed in *Galazka v. Estate of Perkins*, 184 So. 3d 635 (Fla. 4th DCA 2016)). For provisions to “affect” a former spouse, they do not need to benefit the former spouse directly. The court in *Carroll v. Israelson* applied the statute to invalidate provisions of a will establishing trusts upon the decedent’s death for the benefit of his former wife’s relatives, because such provisions “affected” her. Covered assets will pass as if the decedent’s former spouse predeceased the decedent. This statute has implications for certain employee benefits. So, upon learning of a Florida resident employee’s divorce or annulment of marriage, employers may consider notifying the employee about the importance of updating beneficiary designations. **How it Plays Out** A former wife named as primary beneficiary on her former husband’s life insurance policy asserts a claim for benefits under the policy. The parties divorce. The insured former husband never changes his beneficiary designations. Many such insured employees may not know that the payor of life insurance proceeds may rely on [section 732.703, Florida Statutes](#), review the deceased insured’s marital status on the death certificate—and his relationship to the claimant, and make payment decisions under different scenarios. For example, if the death certificate states that the decedent was not married at the time of his death, [section 732.703\(5\)](#) authorizes a payor to pay the secondary beneficiary. The payor/insurer may rely on the decedent’s marital status as shown on the death certificate, “Single” or “Divorced” or “Married” (to someone other than the former spouse), and pay the secondary beneficiary, unless one of the statutory exceptions applies. Likewise, if the death certificate states

the decedent was married to the spouse who is named as the primary beneficiary of the asset upon death, the payor/insurer will not be liable for paying on account of, or transferring an interest in, that portion of the asset to such primary beneficiary. Failure to update designations in policies, trusts, and wills that “affect” a former spouse may result in payment of death benefits the employee never intended. **Applicability of Statute** [Section 732.703\(2\), Florida Statutes](#) applies to decedents who die after July 1, 2012, regardless of when they made a beneficiary designation. The statute applies to the following assets in which a Florida resident has an interest at death: (a) A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan. (b) An employee benefit plan. (c) An individual retirement account, including an individual retirement annuity described in [section 408\(b\) of the Internal Revenue Code of 1986](#). (d) A payable-on-death account. (e) A security or other account registered in a transfer-on-death form. (f) A life insurance policy, annuity, or other similar contract that is not held within an employee benefit plan or a tax-qualified retirement account. **Exceptions** There are exceptions to the statute. The designated beneficiary will not be deemed to have predeceased the beneficiary if:

1. Controlling federal law provides otherwise. See, for example, [Hillman v. Maretta, 133 S. Ct. 1943 \(2013\)](#), in which the U.S. Supreme Court held federal law, the Federal Employees' Group Life Insurance Act of 1954 (FEGSIA), preempted a Virginia statute similar to Florida's automatically revoking a beneficiary designation on a federal employees' life insurance policy. The decedent, a federal employee, remarried but never changed the designation of his former wife as beneficiary. His widow lost her lawsuit seeking to direct the payment of the death benefit to his estate, of which she was beneficiary, rather than to his former wife. Citing [Hillman](#), a Florida state court held, if the Servicemembers' Group Life Insurance Act (SGLIA) protected a qualified beneficiary designation under a life insurance policy qualified under the SGLIA, federal law would preempt the state court's order directing a former husband to change the beneficiary designation of his existing life insurance policy. [Hirsch v. Hirsch, 136 So. 3d 622, 623-34 \(Fla. 2d DCA 2013\)](#). But, in [Walsh v. Montes, Case No. 34,254 \(NM Ct. App. November 14, 2016\)](#), the New Mexico Court of Appeals held the preemption doctrine did not bar claims between contestants to proceeds of a qualified Fidelity savings and investment plan under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 to 1461 (1974, as amended through 2012). The decedent designated her ex-husband on, but never updated, a beneficiary designation form. The plan administrator had properly paid out the proceeds of the account in reliance on the designation form and in accordance with the plan's written terms. Under a theory the ex-husband had waived his rights in a marital settlement agreement to benefits in the plan, however, the court allowed the former wife's estate and children to pursue recovery against him for the proceeds he received. The court distinguished FEGSIA's statutory order of precedence, intended by Congress to achieve complete freedom for employees in designating beneficiaries, from ERISA, which includes no statutory order of precedence and does not expressly prohibit waiver or restriction of beneficiary designations.

2. The governing instrument is signed by or on behalf of the decedent after the dissolution judgment or order of annulment and expressly provides that the interest will be payable to the designated former spouse, regardless of dissolution or invalidity of the decedent's marriage. After adoption of Section 732.703, the Florida Supreme Court adopted amendments to approved family law forms, including the form marital settlement agreement, for parties to choose if beneficiary designations are to continue after entry of a final judgment of dissolution of marriage. See *In re Amendments to the Florida Supreme Court Approved Family Law Forms*, 138 So. 3d 389 No. SC13-532 (May 1, 2014).
3. To the extent a will or trust governs the disposition of assets and [section 732.507, Florida Statutes](#) (e.g., a specific post-divorce designation of former spouse in will or obligation in a final judgment to make the former spouse an irrevocable beneficiary) or [section 736.1105, Florida Statutes](#) applies.
4. A final judgment of dissolution or annulment requires the decedent to maintain the asset for the benefit of the former spouse or children of the marriage, payable on death outright or in trust, only if other assets of the decedent fulfilling such requirement for the benefit of the former spouse or children do not exist upon death.
5. The decedent did not have the ability unilaterally to change the beneficiary or pay-on-death designation.
6. The designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law.
7. To an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners.
8. The decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death.
9. To state-administered retirement plans under [Chapter 121, Florida Statutes](#).

Checklist for Employers

- Has the employee or plan participant notified the employer of a dissolution or annulment of marriage?
- Is the employee participating in a benefit plan within the scope of section 732.703?
- Does the employer consistently notify all employees of the importance of updating designations for life changing events such as divorce or annulment?
- Has the employer who receives notice of a divorce judgment notified the employee of the importance of updating designations?

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