

## **Family Wealth Transfer Strategy #2 Changing Pension Beneficiaries After Divorce**

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It is logical to believe a divorce decree would be sufficient to effectively remove an ex-spouse as a beneficiary. However, in a decision this year, the United States Supreme Court issued a ruling allowing the ex-wife to be the beneficiary of her deceased ex-husband's pension plan. Accordingly, she was entitled to his pension benefits even though she had waived the designation in the divorce decree. As a result, it is now more important than ever for our clients to properly change the beneficiaries upon divorce (or when a spouse waives his or her interest in an "Employee Retirement Income Security Act" (ERISA) governed pension plan).

The case was *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*. As background, William Patrick Kennedy was an employee of the DuPont Company. He participated in the employee pension plan under the ERISA. In 1971, William married Liv Kennedy and subsequently designated her as the sole beneficiary of his pension plan with DuPont. William and Liv later divorced and Liv waived her interest in William's pension plan in their final divorce decree. However, after the divorce William failed to remove, or replace, Liv as the designated beneficiary on his pension plan. William later retired from DuPont in 1988 and died in 2001. He was survived by Liv and a daughter, Kari.

Kari, as the Executrix of William's estate, wrote to DuPont requesting his pension benefits be distributed to the estate, stating that Liv had waived her interest in the benefits in the divorce decree. DuPont refused and, instead, paid approximately \$400,000 in pension benefits to the ex-spouse because she was still the designated beneficiary according to the plan documents. The estate then requested Liv relinquish the \$400,000 in benefits, but she refused. The estate then sued DuPont to recover the pension benefits, alleged to have been wrongfully paid. The District Court in Texas agreed with the estate. DuPont later appealed and the 5th Circuit Court of Appeals held that Liv was still entitled to William's pension benefits, notwithstanding the fact that she was the ex-spouse and had specifically waived her right to the benefits in the divorce decree. The 5th Circuit indicated the only way for the spouse to effectively waive her right to the pension benefits was by filing a document with DuPont, as required under ERISA.

In a unanimous decision, the U.S. Supreme Court held that, although the ex-spouse waived her interest in the deceased spouse's pension benefits in their divorce decree, the employer did not err in paying the ex-spouse the proceeds after the employee passed away.

The Court was concerned about permitting divorce decrees to constitute an effective waiver that would require plan administrators to inquire into the divorced spouses' intent and circumstances surrounding the execution of the waiver, all of which are outside a plan administrator's functions. By requiring participants to file the appropriate documents under plan procedure and directing plan administrators to pay-out benefits in accordance with the documents and instruments on file, the Court sought to further the goal of a uniform administrative scheme in the application of ERISA and to eliminate litigation in the future.

Thus, to ensure the intent in a divorce, the party must make sure the waiving spouse signs the proper forms from the plan administrator, with the entry of the judgment. After the spouse executes the necessary documents, the plan participant must make sure they are filed with the plan administrator and that the beneficiary designation is effectively changed.