

# The Beneficiary Designation Review:

---

## An Opportunity to Serve

# Important Information

---

The opinions and ideas expressed by Linas Sudzius are his own. North American Company for Life and Health Insurance<sup>®</sup> does not endorse or promote these opinions and ideas. This presentation is for agent use only and cannot be used, in whole or part, with consumers.

# Flaws in Beneficiary Designations

- Beneficiary Designations
  - Can Cause Significant Problems for Clients
  - Mistakes Can Be as Costly as Flaws in Wills or Trusts
  - In Most Cases can be Easily Avoided or Remedied
  - Opportunity to Help Clients and Prospects Fix Potential Problems – And Serve Them Better

# Common Errors at Inception

- Failing to Name Contingent Beneficiary
- Naming a Minor Child as Primary or Contingent
- Failing to Consider Special Needs Family Members
- Being Unclear about Fractional Language
- Inconsistency with State Law
- Failing to Properly Tie Beneficiary Language to Other Documents
  - Support obligation
  - Wills/Trusts
  - Loan documents
  - Buy-sell

# Problems that Develop Later

- Policies are Not Reviewed after Divorce
- Pre-Deceased Beneficiaries
- New Distribution Intentions
  - New Spouse
  - New Children
  - Family Issues

# Recent Court Cases

- Key Beneficiary Court Cases in the Past Year
  - *Kowalski v. Jackson National*
  - *Knights of Columbus v. The Virginia Trust*
  - *Rice v. Webb*
  - *Hartford Life and Annuity Co. v. Farris*
  - *Transamerica v. Estate of Randle*
  - *West Coast Life v. Clarke*

# Kowalski v. Jackson Nat'l

- 1992: Edward bought a policy on the life of his mother, Florence. Edward and his wife, Lisa, paid the premiums
  - Edward was named sole beneficiary of the policy.
- 2008: Edward died, and Lisa became the owner of the policy.
  - Lisa failed to change the beneficiary from Edward to herself.
  - Lisa made each of the following premium payments herself and obtained a \$50,000 loan against the policy.
- 2011: Florence (the insured) died
- Who gets the death proceeds? Lisa or Florence's estate?

*Kowalski v. Jackson National Life Ins. Co., et. al.*, 2013 WL 5954380 (U.S.D.C.S.D.Fla. November 7, 2013).

# Kowalski v. Jackson Nat'l

- The Florida district court ruled in favor of Lisa on equitable grounds
  - The court relied on the fact that Lisa continued to pay the policy premiums because she thought she was both the owner and beneficiary of the policy.
- Takeaways:
  - *Have your clients review their beneficiary designations periodically.*

# Knights of Columbus v. The Virginia Trust

- 1999: Williams purchased two life policies.
  - Originally named three beneficiaries: William, Melanie, and Danny.
- 2000: Williams changed the beneficiaries to “The Virginia Trust Dated 9/30/99” and failed to name a contingent beneficiary. Williams also revoked the initial three beneficiaries.
- 2001: Williams married Sheree.
- 2011: Williams died.
- It turns out that *The Virginia Trust* did not exist (or, it at least couldn’t be found or verified).
  - Who’s the beneficiary? Sheree (as spouse) or the three “original” beneficiaries?

*Knights of Columbus v. The Virginia Trust, et al*, 2014 WL 279657, No: 2:12CV-688 JCM (VCF) (U.S. Dist. Ct Nev. January 23, 2014).

# Knights of Columbus v. The Virginia Trust

- Insurance company's bylaws dictate the result.
  - Bylaws state that if the insured (Williams) failed to make a designation, or if the named beneficiaries are dead, or if the designation fails, *then the death benefit shall be paid first to the insured's spouse.*
  - Therefore, Sheree was entitled to the death benefit.
- Takeaways:
  - *Rule of 2: for every document, will, trust, etc., have two contingent beneficiaries in case the named beneficiary does not survive.*
  - *Constantly update and revisit wills, trusts, life insurance beneficiary designations, etc.*
    - *Changes in preferences and changes in the law.*

# Rice v. Webb

- 2011: Brenda and Dale divorced.
  - In the divorce decree, both spouses relinquished their claims against the other spouse's life insurance policies.
- Dale died shortly after the divorce without changing the beneficiary of his two policies (leaving Brenda as the named beneficiary).
  - Brenda claimed the death benefits since she was the named beneficiary.
- **Nebraska law:** divorce does not affect a beneficiary designation in a life insurance policy.
- Does Brenda win?

*Rice v. Webb*, 287 Neb. 712 (S. Ct. March 21, 2014)

# Rice v. Webb

- The Nebraska Supreme Court ruled against Brenda because, in the divorce decree, she had unambiguously given up her beneficiary rights in the life insurance policy.
  - One judge advocated Nebraska's legislature to change the rules to be in line with many other states that treat a divorced spouse as having pre-deceased the insured for the purpose of the beneficiary designation.

# West Coast Life v. Clark

- 1999: A life insurance policy is purchased on Jeffrey's life, payable to Glenda (wife) as primary beneficiary.
  - All policies (except for one in 2009 paid by Jeffrey) were paid by their joint business.
- 2007: Separation
- 2009: Jeffrey filled out a change of beneficiary form and gave it to his sister, Kathleen, who was to be the new beneficiary.
- November 16, 2012: Divorce finalized
- November 24, 2012: Jeffrey died (eight days after divorce).
- January, 2013: Kathleen files the change of beneficiary form given to her in 2009.
- Who's the primary beneficiary?

*West Coast Life v. Clark*, 2014 WL 2468350 (C. Dist. CA 2014)

# West Coast Life v. Clark

- California Court: in order to change the beneficiary, the owner must *strictly* comply with the terms of the policy.
  - Here, it required the form to be submitted before the death of the insured.
  - There are three exceptions to the strict compliance doctrine in California:
    - Insurance company waives strict compliance
    - Beyond the insured's power to strictly comply with the insurer's requirements
    - Insured has done all he could to effect the change
  - The court said Jeffrey had eight days after the divorce to change the beneficiary, but he did not, so Glenda is entitled to the proceeds.

# Hartford Life & Annuity Co. v. Farris

- *1986*: Thomas purchased a policy on his life, naming his wife, Natalia, as beneficiary.
  - Premiums paid with marital funds from a joint account.
- *2008*: Thomas and Natalia separated. Natalia continued to pay the premiums with her own money and support Thomas financially. Thomas told Natalia that she would continue as beneficiary.
- *September 2011*: Thomas removed Natalia as beneficiary (unbeknownst to Natalia). Natalia continued to pay the premiums.
- *December 2011*: Thomas died before the divorce was finalized
- Who receives the death proceeds?

*Hartford Life and Annuity Co. v. Farris, et al.*, No. 12-C-1320 (N.D. Illinois, Eastern Division June 19, 2014).

# Hartford Life & Annuity Co. v. Farris

- Illinois Court: Natalia had acquired an equitable interest in the proceeds prior to Thomas's death.
- General rule: rights in life insurance do not vest until an insured dies.
  - Illinois exception: someone other than a named beneficiary can acquire equitable rights in an insurance policy if she can show:
    - An unambiguous promise;
    - Reliance on such promise;
    - The promisor (Thomas) expects and foresees such reliance; and
    - The promisee (Natalia) relies on the promise to her injury.
- Court ruled in favor of Natalia.

# Transamerica v. Estate of Randle

- Gloria buys an annuity in 1999, naming Arie as the primary beneficiary and Wilbert as the contingent beneficiary.
- Gloria dies on March 1, 2010.
  - Arie (primary beneficiary) dies two days later on March 3, 2010.
- Who gets the money?
  - Wilber as contingent beneficiary?
  - Or the estate of Arie as primary beneficiary?

*Transamerica Life Insurance Company v. Estate of Randle*, 2014 WL 2747834 (U.S.D.C. Dist.OR. 2014);

# Transamerica v. Estate of Randle

- Court says the contingent beneficiary is entitled to the annuity.
  - **Oregon's simultaneous death statute:** beneficiary is deemed to have died before the deceased unless the beneficiary survived the deceased by at least 120 hours.
    - So Arie, the primary beneficiary is deemed to have predeceased Gloria, under Oregon law, and the annuity goes to Wilbert, the contingent beneficiary.
- Oregon's simultaneous death statute can be overcome by the underlying contract
  - The contract could expressly say that the simultaneous death rule doesn't apply, or that it applies with a different duration.

## Other Things to Consider

- Is the Beneficiary Designation Language Correct
- Adequacy of Coverage
- Proper Premium Funding
- Possible Conversion
- Is the Kind of Policy Correct?



**Insert your Company's  
Information Here**