

The Importance of Proper Beneficiary Designations

Every participant in a defined contribution retirement plan should have a properly completed beneficiary designation on file with the plan. The form should specify to whom benefits are to be paid in the event of the participant's death and should be signed and dated by the participant. The form may provide for contingent beneficiaries (who would receive the death benefits in the event the primary beneficiaries are not living at the participant's death), but it need not do so. If the participant is married and names someone other than the participant's spouse as the beneficiary for any portion of the death benefits, the spouse must consent to the designation and that consent must be witnessed by a notary public or plan representative.

Failure of a participant to sign and date a beneficiary designation or obtain spousal consent when necessary may cause the designation to be invalid. In the event there is no beneficiary designation or the designation is invalid, the death benefits must be paid in accordance with the plan's terms, possibly to someone other than whom the participant intended. Therefore, it is vitally important that beneficiary designations be reviewed by a representative of the plan immediately upon receipt to ensure that they have been properly completed and the designation is clear. It is best to address any deficiencies as soon as possible. Finding a problem with a beneficiary designation only after the death of the participant is a recipe for litigation.

Some courts allow unsigned beneficiary designations or otherwise defective beneficiary designations to be enforced, based on the law of the state in which the case arises or federal law (depending on which the court chooses to apply), under a doctrine known as substantial compliance. Under this doctrine, if a participant clearly expresses his or her intent to name a specific person as beneficiary and substantially complies with the plan's procedures for naming a beneficiary, then an otherwise deficient beneficiary designation may be allowed to stand.

Whether a participant substantially complied with the plan's procedures for naming a beneficiary depends on the specific facts. The plan should have very clear procedures in place for naming a beneficiary and should communicate those procedures to plan participants. For example, the plan may require that the designation be delivered to the plan during the participant's lifetime in order for the designation to be accepted by the plan.

Some plan documents provide that divorce invalidates a beneficiary designation naming a spouse as beneficiary. Our plan documents do this. If the participant does not execute a new beneficiary designation form after a divorce, and the plan's provisions invalidate the designation of the participant's former spouse as the beneficiary, the beneficiary will be determined according to the plan's terms. If a participant wanted to (or was required as a term of a divorce settlement to) retain the former spouse as the beneficiary after a divorce, the participant would need to execute a new beneficiary designation, again naming the former spouse as the beneficiary.

If you have provided us with copies of participant beneficiary designations, our participant benefit statements will show those designations. Therefore, it is important that you send us copies of participant beneficiary designations upon receipt so we have the most up-to-date information on file. You should encourage plan participants to review the beneficiary designations shown on their statements at least annually to ensure they still reflect participant wishes.

If you have any questions regarding beneficiary designations for your plan or need blank beneficiary designation forms, please contact your EBR plan consultant.