

FAMILY LAW

Drafting Divorce Agreements to Address Life Insurance Obligations

By Nicole A. Kobis

Regardless of the underlying reason for the divorce, most couples who are separating find the process exhausting. This exhaustion is not only felt emotionally but often financially, as typically each has had to begin living on a reduced budget than they were accustomed to. At the end of the divorce process, once the agreements have been signed and the gold seal placed on the judgment, the last thing most divorced individuals want is an additional expense or another task on their “divorce to do list.” However, an often overlooked and extremely important task that needs to be addressed is obtaining and/or maintaining life insurance policies for each divorced spouse, along with ensuring documentation is in place to allow



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each party access to the policies’ pertinent information.

Oftentimes divorced couples continue to have financial ties to one another by way of alimony and/or child support payments. These obligations often last for years, if not decades, after the ink has dried on their divorce judgments. The security life insurance

provides does not diminish after a divorce, but arguably becomes even more important. Once the amount of support obligation is either agreed upon or ordered, the former spouses create their new personal budgets based off the amount of support they will pay or the amount they will receive. But, what happens if one of the

spouses dies after a divorce and while support obligations are still in effect? This is where the existence of life insurance policies to secure these support obligations becomes particularly important.

Unless agreed upon otherwise, the obligation to pay alimony terminates upon the death of either spouse. However, if a payee spouse has relied upon a certain amount of spousal support, the sudden termination of alimony could create a financial catastrophe. If a life insurance policy was in existence for the benefit of the payee spouse, the policy payout can help to mitigate the negative financial impact that a sudden and unexpected death can cause.

Similarly, while child support is paid to one spouse for the benefit of the parties' child or children, the custodial parent relies on consistent support payments in order to cover the everyday expenses of their children, and may find that the death benefit on such a policy would be necessary to cover not only these daily costs but also future educational expenses associated with college or private school.

N.J.S.A. 3B:3-14 provides that any property interest that one spouse has designated to their former spouse is automatically revoked upon the entry of a judgment of divorce, unless provided

for in a court order or contract pertaining to the division of the marital enterprise. Settlement agreements that are incorporated into divorce judgments, as well as court orders entered at the conclusion of a trial which provide for the continued maintenance of life insurance policies, allows a former spouse to remain as the named beneficiary to a life insurance policy after a divorce is completed.

The issue of beneficiary changes to life insurance policies post-divorce and the proper drafting of settlement agreements was recently in the news after the issuance of a 6th Circuit appellate decision involving the payment of a life insurance policy's death benefit to a child because of the language in the parties' settlement agreement. In *Sun Life Assurance Company v. Jackson*, the parties divorced in 2006 and entered into a settlement agreement which provided that the parties would continue to maintain any employer-related life insurance policies for the benefit of their child, Sierra, until she turned 18 or graduated from high school. The 6th Circuit found that the language in the parties' settlement agreement met the requirements enumerated in ERISA for a qualified domestic relations order and therefore, despite the father/policy owner not changing the

beneficiary from his uncle to his daughter, in accordance with the terms of the parties' settlement agreement, the policy should be paid to the daughter because of the language of the divorce settlement agreement. While not binding in New Jersey, this opinion reinforces the importance of properly drafted settlement agreements, particularly in the area of beneficiary designations post-divorce.

While it is simple to add in proper language to a settlement agreement to provide for the continued existence of a life insurance policy with specific beneficiary designations, this only addresses one portion of the equation. For the spouse who is not the owner of the policy but who may be the beneficiary, it is important that they be provided with the ability to access pertinent information regarding the policy. This information includes whether the policy is in existence, when premiums are due and whether they have been paid, and if any beneficiary designation or coverage amount changes have been made which could be contrary to stipulations provided for in the divorce settlement.

The growing focus on cybersecurity and data privacy has caused nearly every industry to tighten its procedures to ensure the safety of customer data and personally

identifiable information. The insurance industry is no different. Regulators in certain states are evaluating the need for the implementation of standards to ensure continued consumer protection. While some life insurance companies only require that access to policy information by a non-owner former spouse be given in a settlement agreement or court order, others require separate authorizations, company specific forms or even additional court orders to permit the non-owner access. Unfortunately there is no bright line rule or standard practice followed by companies, so the only way to know what a specific life insurance provider requires is to contact them directly. In my experience, the answer to this question may be given quickly by way of direction to a preprinted form, or can become more complicated and require correspondence to be given to the legal department of the company for their review and further analysis.

Inquiries concerning beneficiary designations, premiums and coverage amounts can be made during settlement negotiations

for couples who already have life insurance policies that they will continue to maintain after their divorce. However, for those individuals who will need to obtain life insurance as a result of the settlement or court order, these questions may be unanswerable until some time has passed after a judgment has been entered. This may present a problem in the event that authorizations need to be drafted or court orders issued, because it may mean additional costs not only for the preparation of these documents, but may also require the filing of motions in the event one spouse is not cooperative.

Once it is determined what specific information an insurance provider requires, the appropriate documents can be prepared and consented to by the spouses and signed. While the preparation of authorizations or other documents may, at the time, seem like an unnecessary expense to some individuals, or an extra step in what may have been an already long and draining process, in the event that information is needed, these documents will be the only

way to gain access to policy records.

Another option for parties to consider is the transfer of ownership of the policy to the non-owner beneficiary spouse if permitted by the carrier. If the carrier permits this, it would provide the beneficiary spouse with the “owner status” required by insurance companies to receive updates regarding the policy, and direct access to the carrier to request information regarding policy changes that may be contrary to the terms of the settlement or court order.

Despite the specific drafting of agreements and other documents, it is still of course possible for a party to breach their obligation to maintain life insurance in accordance with the terms of settlement or court order, which may then result in additional motion practice or litigation against an estate. However, as practitioners it is important to ensure that these options are explored with individuals going through a divorce to ensure that every “i” is dotted and every “t” crossed while the ink is still drying on divorce documents. ■