

A Waiver Is Not A QDRO

Participants - Review Your Designation of Beneficiary.
Administrators - Review Your Plan and Procedures.

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This year, the Supreme Court's decision in Kennedy v. Plan Administrator for DuPont Savings and Investment Plan, 172 L.Ed.2d 662, reinforced two principles of ERISA important for participants and beneficiaries and for plan administrators: (i) a divorce decree waiving a non-participant spouse's marital property interest in a participant's pension is not a qualified domestic relations order (QDRO), and (ii) the plan administrator should be guided in administering survivorship and death benefits by the unambiguous terms of the plan and of the participant's designation of beneficiary, not by assessment of the motives, intentions or merits of competing claimants. Significant lessons may be drawn from these principles.

The Kennedy case arose when in 1994 a participant and spouse divorced under a decree that purported to divest the spouse of all right, title, interest and claim to proceeds from the participant's pension. Following the divorce, however, the participant did not change his designation of beneficiary, which continued to designate his former spouse. Thus, when he died in 2001, the children claimed that the benefits should go to his estate, but the plan administrator awarded the benefits to the participant's former spouse. The children, acting through the executrix of the estate, then sued the plan administrator.

The District Court entered judgment for the estate, saying that the former spouse's waiver was explicit, voluntary, and in good faith and so should be honored. The plan administrator appealed, arguing that only a QDRO could override the designation of beneficiary, and the waiver was not a QDRO. The Fifth Circuit reversed the decision of the District Court by reasoning that the waiver acted indirectly as an assignment (to the succeeding beneficiaries) and so should be treated as if it purported to be a QDRO. However, since it did not satisfy the requirements for a QDRO, it could not be given effect, and the plan administrator was obligated to honor the designation of beneficiary. The Fifth Circuit's reasoning gave rise to a series of puzzling questions about how the waiver could have been drafted to meet the requirements for a QDRO.

The Supreme Court affirmed the Fifth Circuit's reversal of the District Court but on different grounds. It held, first, that the divorce decree waiving the spouse's property interest in the participant's pension was not a QDRO and never could be a QDRO. It is not an assignment of benefits and does not designate an alternate payee. Thus, it is a mistake to treat it as if it purports to be a QDRO or might be modified to become a QDRO.

Second, the Supreme Court held that in the absence of a QDRO the plan administrator was obligated to follow the terms of the plan and other documents, including the participant's designation of beneficiary, that govern the plan. The participant's designation of beneficiary was unambiguous and remained valid. Although the plan and Treasury regulations provided an avenue by which the former spouse, as beneficiary, could have disclaimed her interest in the benefit, she did not avail herself of that avenue. Therefore, the plan administrator correctly paid the benefit to the participant's former spouse.

Further, the Supreme Court said this is what ERISA intended by requiring the plan administrator to administer the plan in accordance with the written documents governing the plan. Guided by clear plan provisions and an unambiguous designation of beneficiary, this requirement means that the plan administrator should follow the plan and the designation of beneficiary and not otherwise assess the intentions, motives, or merits of the parties or claimants.

The Kennedy decision provides good lessons to participants, their spouses and attorneys as well as to plan administrators. Participants, their spouses and attorneys should know that a divorce decree or property settlement that merely waives or divests the spouse's property interest in the participant's pension will not control the plan administrator's payment of benefits. If the parties intend that the waiver allow the participant to designate other beneficiaries, the participant should act promptly to do so. The participant's remarriage will effect a change in beneficiary, but if the participant does not remarry, he should take action to change his designation of beneficiary.

Plan administrators should be assured that they may ignore a waiver or divestment of rights entered in a property settlement or divorce decree that does not purport to expressly assign benefits to an alternate payee. The plan administrator then is free to follow, indeed, is obligated to follow, the unambiguous terms of the plan and of the participant's designation of beneficiary.

Thus, plan administrators should ask:

- Is the plan unambiguous about what happens to a designation of beneficiary if the participant's marriage is dissolved, a beneficiary dies, or no designated beneficiary survives or can be found?
- Does the summary plan description clearly explain what happens to a designation of beneficiary in such circumstances?
- Does the designation of beneficiary form notify the participant how his beneficiary will be determined if he divorces or remarries, if the designated beneficiary dies, if he fails to designate a beneficiary, or no designated beneficiary survives?
- Are participant's encouraged to review their designations of beneficiary when a divorce occurs or a beneficiary dies?

- Finally, when competing claims arise that lie beyond the scope of what the terms of the plan govern, does the plan provide sufficient authority for the plan administrator to compel the claimants to resolve their dispute in court, or in arbitration or mediation and protect the interests of the plan and the plan administrator in the meantime?

Well drafted plan documents and good administrative practices can help participants and beneficiaries, substantially reduce the burdens of administering the plan and avoid the cost of unnecessary lawsuits. If you have questions about the above or would like assistance in addressing these questions, please contact us.

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