

## How Divorce Can Impact Your Estate Plan – Virginia Beneficiary Designations

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The [last article](#) regarding the impact of divorce on one's estate plan talked about property settlement agreements and the obligations that must be incorporated into the estate plan. This next article will discuss how most individuals going through a divorce have qualified retirement accounts, life insurance policies and cash, savings or brokerage accounts that may have a beneficiary designation or payable on death or transfer on death designation that needs to be updated. Very often the named beneficiary is the former spouse. What happens if the beneficiary designation is not updated and a person dies having named his or her former spouse on these accounts?

Under *Virginia* law, upon the entry of a decree of divorce, “any revocable beneficiary designation . . . that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be as if the former spouse had predeceased the decedent.” *Va. Code §20-111.1(A)*. The statute includes payments from life insurance, annuities, retirement accounts, compensation agreements or other contracts where assets are paid at death. This law is favorable for those that forget to update their beneficiary designations, however, there are exceptions. The law does not apply (a) if the property settlement agreement and/or divorce decree provides for the former spouse to be named; or (b) to any trust or any death benefit payable to a trust. *Va. Code §20-111.1(C)*. Furthermore, the Virginia law may be preempted by Federal law.

If the Virginia law is preempted by a Federal law, the Virginia law states that in the event the death benefit is paid to a former spouse for no consideration and the former spouse was not otherwise entitled to such payment, the former spouse will be “personally liable for the amount of the payment to the person who would have been entitled to it were this section not preempted.” *Va. Code §20-111.1(D)*. Thus, if a person remarries, but fails to name their new spouse as a beneficiary on their Federal retirement account and continues to name their former spouse, arguably, the new spouse could seek reimbursement from the former spouse.

However, in the case of [Hillman vs. Marett](#), a widow sued the decedent's former spouse for the amount the former spouse received under the decedent's federal employees' group life insurance (“FEGLI”). The parties acknowledged that *Va. Code §20-111.1(A)* was preempted by Federal law. However, the widow argued that *Va. Code §20-111.1(D)* regarding personal liability was not preempted. After careful analysis and consideration, the Circuit Court of Fairfax County held in favor

of the widow. On appeal to the Virginia Supreme Court, the Court ruled that the trial court erred and that Federal law trumps state law. Ultimately, the U.S. Supreme Court agreed with the Virginia Supreme Court.

Thus, in 2012, Virginia's statute was modified to require every divorce decree to include a notice warning the parties that beneficiary designations may not be automatically revoked by operation of law as a result of the divorce. Therefore, the parties are responsible for updating their beneficiary designations to avoid any unintended consequences. As a result of the *Hillman* case, updating beneficiary designations, particularly beneficiary designations that are governed by Federal law, is critical.

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