



IRA UPDATE: MAY 2012

First Spouse Gets Pension Benefits

Mr. Wayne Lee died in 2007 leaving a question as to which of his two wives would be beneficiary of his retirement funds. As the story goes, Mr. Lee was married to Cleta in the state of Washington in 1979. Somewhere around 1992, Mr. Lee moved to Mississippi without his wife Cleta in order to find a job. Well he found much more than a job; he found his second wife Lois whom he married in 1995. Around 1997, Mr. Lee retired and began to receive payments from his employer's pension plan naming his second wife Lois as beneficiary. Mr. Lee named Lois as beneficiary on the beneficiary form and he even went as far as to provide a copy of the marriage certificate as evidence that Lois was in fact his wife. So when he died in 1997, naturally Lois requested the payments continue to her as beneficiary. At the same time, Cleta learning of the death applied for benefits as the surviving spouse and the case ended up in court.

The District Court ruled in favor of Lois because she was named as the beneficiary and Mr. Lee had provided "evidence" that Lois was his spouse. Cleta appealed the ruling to the U.S. Court of Appeals which reversed the decision of the lower court stating that Cleta gets the benefits if she can prove the marriage was never dissolved.

There's the rub; the marriage between Mr. Lee and his first wife Cleta was never dissolved making the marriage to Lois invalid and even though he named Lois as beneficiary on the beneficiary form, Cleta still gets the benefits! The reason is that under ERISA (Employer Retirement Income Security Act), a spouse is automatically the beneficiary regardless of who is actually named on the beneficiary form, and in order to name a beneficiary other than one's spouse, such spouse must sign a waiver of benefits. In this case, Cleta who was legally Mr. Lee's wife had never signed such a waiver plus the marriage to Lois was invalid.

So the moral of the story is not only to properly fill out a beneficiary form, but check and see if you are still married to your first (previous) spouse, or if you are a potential beneficiary, make sure your (soon to be) spouse is not already married!

It is also important to keep in mind that if a soon to be spouse is going to waive retirement benefits in favor of another beneficiary, a pre-nuptial agreement that contains such a waiver is not valid because only a spouse can waive the benefit and a fiancé is not yet a spouse. Also, a divorce agreement may stipulate a waiver of benefits pending the divorce, but this must be followed up by actually changing the beneficiary form otherwise the former spouse might get the benefits anyways (as has happened in many court cases on this issue).

Ex-Spouse Sued by Estate

In an interesting twist with a story similar to the Lee case discussed above, the estate of a plan participant can sue an ex-spouse who had received benefits under a plan even though she waived her rights as part of the divorce settlement agreement. In the Estate of William E. Kensinger, Jr., Appellant, V. URL Pharma, Inc.; Adele Kensinger No. 10-4525, an

Appeals court ruled that Mrs. Kensinger who had waived her rights can be sued by the estate of her ex-husband to recover the funds distributed to her. As indicated above, Mr. Kensinger never changed the beneficiary form and thus Mrs. Kensinger received the funds. The distinction here is that the plan is not being sued for distributing the money to the wrong beneficiary because the plan made the distribution properly. Rather in this case it is the estate (by proxy the intended beneficiaries) sued on grounds that the ex-wife made a contractual agreement via the divorce agreement to not accept the funds which by accepting the funds she broke such promise.

Keep in mind that this case only ruled on the ability of the Estate to sue on such grounds; at this point, this case has not been resolved. However if the estate does sue, and wins, it will present a host of technical tax issues that will need to be dealt with so it will be interesting to see how this plays out.

If you believe that aspects of these cases could apply to you, give me a call and we'll discuss your situation.

Sincerely,

Jeremy E. Portnoff

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