

LIFE INSURANCE PROCEEDS AND THE DECEDENT'S ESTATE

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The proceeds of a life insurance policy do not form a part of the deceased person's estate when the policy is made payable to a properly designated beneficiary. The lawful beneficiary of a life insurance policy shall be entitled to the proceeds from the policy against the creditors and representatives of the insured and shall be exempt from all liability for any debt of the deceased person's estate.

A major problem or concern in the beneficiary designation of life insurance policies is the improper or incorrect designation of the beneficiary on policies as is reflected in the examples below.

Example No. 1:

Joe, a divorced man, purchases a life insurance policy and makes it payable to an individual for the benefit of his minor child. Joe dies.

Example No. 2:

Harry, a married man, purchases a life insurance policy and makes it payable to an individual as executor of his minor child. Harry dies.

In both of the examples we do not have a proper beneficiary designation. Both Joe and Harry could have made their policies payable to the individual as "the custodian of the minor child under the Uniform Minor's Act" and had a proper designation. Alternatively, they could have created an inter vivos trust or testamentary trust to take receipt of the policy and designated the trustee of the trust as the beneficiary.

Example No. 3:

Bill, a divorced man and father of three sons, purchases a life insurance policy for the benefit of his three sons.

Two of the sons are given their one-third interest outright. However, as to the third son, Little Billy, the policy provides that the beneficiary is his oldest brother in Trust for Little Billy. Bill dies. A review of Bill's estate reflects that he died without a will and created no trust while he was alive. As a result of this lack of proper planning under the life insurance policy, Billy's interest will, by default, become a part of the decedent's estate and subject to the creditors' claims and the debts of the estate.

In conclusion and in order to make sure that these life insurance proceeds do not become a part of the decedent's estate and therefore subject to creditors' claims and the debts of the decedent, it is extremely important that the insured obtain proper legal advice in the designation of beneficiaries where it involves a beneficiary designation other than to individuals outright.

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