

BENEFICIARY DESIGNATION - EX-SPOUSE

As a general rule, divorce, in and of itself, does not disqualify an ex-spouse from acting as beneficiary under a designation made prior to divorce. However, several states, by statute, disqualify an ex-spouse as to a pre-divorce designation, subject to certain exceptions.

Exceptions to statutory ex-spouse disqualification may occur because of language in a divorce decree or property settlement agreement. The terms of a divorce decree or property settlement agreement may address the issue of the ex-spouse's right as beneficiary and may provide that the ex-spouse has a continuing interest in the life insurance coverage or has waived that interest. The decree or agreement also may require that the insured re-execute the beneficiary designation in favor of the ex-spouse after divorce. Although divorce decrees and property settlement agreements frequently are silent one way or another, it is important to obtain those documents.

Clearly, these disqualification statutes apply to non-ERISA policies (primarily governmental entities). However, the United States Supreme Court has held that state ex-spouse disqualification laws are preempted by ERISA and therefore are inapplicable in determining whether the ex-spouse has a claim under a pre-divorce designation.

The state of Florida has enacted legislation disqualifying an ex-spouse.

Florida (FL ST 732.703) (effective July 1, 2012)

Divorce or annulment revokes the designation of a former spouse made by an insured prior to dissolution. Exceptions: 1) the group life policy is subject to ERISA; 2) the insured designates the former spouse after divorce or annulment; 3) a court order or decree required the insured to maintain insurance for the benefit of the former spouse; or 4) the former spouse and the insured remarry. (Applies to designations made by or on behalf of an insured dying on or after July 1, 2012, regardless of when designations were made).