

MEMO# 26561

October 8, 2012

New Florida Law Prohibits Paying Account Proceeds to an Ex-Spouse Who is a Beneficiary of a Decedent

[26561]

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TO: OPERATIONS COMMITTEE No. 35-12

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 43-12 RE: NEW FLORIDA LAW PROHIBITS PAYING ACCOUNT PROCEEDS TO AN EX-SPOUSE WHO IS A BENEFICIARY OF A DECEDENT

Effective July 1, 2012, Florida has a new law that, with certain limited exceptions, voids an ex-spouse's designation as a beneficiary for specified accounts and imposes upon the holder (i.e., "payor") of the account a duty to obtain additional information to determine the proper payee of such proceeds. [\[1\]](#) The provisions of this new law are summarized below.

Accounts Subject to this New Prohibition

The assets that are subject to this new law, which are listed in Section 732.703(3), Florida Statutes, are any of the following in which a Florida resident has an interest in at the time of the resident's death:

- A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- An employee benefit plan;
- An individual retirement account or individual retirement annuity;
- A payable-on-death account;
- A security or other account registered in a transfer-on-death form; and
- A life insurance policy, annuity, or other similar contract that is not held within an employee benefit plan or a tax-qualified retirement account.

Exceptions to the Above List of Accounts

Subsection (4) of the new law provides that the law does not apply:

- To the extent that controlling Federal law provides otherwise; [\[2\]](#)
- If the governing instrument was signed after the dissolution of marriage and expressly provides that benefits will be paid to the decedent's former spouse;
- To the extent a will or trust governs disposition of the assets;
- If the court order annulling or dissolving the marriage requires the decedent to acquire or maintain the asset for the benefit of the former spouse or children of the marriage;
- If the court order annulling or dissolving the marriage would have prohibited the decedent unilaterally terminating or modifying ownership of the asset or its disposition upon the decedent's death;
- If the beneficiary designation is irrevocable under applicable law;
- If the instrument directing the disposition of the asset at death is governed by another state's law;
- To an asset that is held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners;
- If the decedent remarries the person whose interest would otherwise have been revoked and the couple was still married as of the decedent's death; and
- To state-administered retirement plans in the Florida Retirement System.

Duty Imposed on Holder (Payor) of Property

Unless one of the above exceptions applies, the law voids any designation of a former spouse as a beneficiary as of the time the decedent's marriage was judicially dissolved or declared invalid by a court order if the designation was made prior to the dissolution or court order. In such case, the decedent's interest in the asset shall pass as if the decedent's former spouse predeceased the decedent. The procedures for determining beneficiary on the account are set out in Section (5) of the new law as follows:

- If the governing document does not specify the relationship between the designated beneficiary and the decedent: The payor may pay the account to the named beneficiary without further inquiry and without liability for making the payment to the beneficiary.
- If the governing document specifies the beneficiary to be the spouse of the decedent: The death certificate must be reviewed:
 - If the decedent's death certificate specifies the beneficiary to be the decedent's spouse at the time of death, the payor may pay the surviving spouse.
 - If the death certificate states that the decedent was either (1) unmarried at the time of death or (2) married to someone other than the spouse indicated on the account, the payor may pay out the account to the secondary beneficiary.
 - If the death certificate is silent as to the marital status of the decedent, one of two affidavits must be obtained by the payor before paying the account to a beneficiary. One affidavit is for a surviving spouse who was married to the decedent at the time of death. Once a payor obtains this affidavit, it may pay out the account proceeds to the surviving spouse. The other affidavit would be executed by a secondary beneficiary and affirms that the primary beneficiary was not married to the decedent at the time of the decedent's death. Upon receipt of this affidavit, the payor may pay the

account proceeds to the secondary beneficiary. [The form of each of these affidavits is set forth in the new law.]

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endnotes

[1] The new law, Section 732.703, Florida Statutes, was enacted through the passage of the Committee Substitute for House Bill 401 and applies to all designations made by or on behalf of a person who dies on or after July 1, 2012, regardless of when the designation was made. A copy of the new law is available at:

<http://www.flsenate.gov/Laws/Statutes/2012/732.703>. According to the staff of the Florida House of Representatives, this bill was requested by the Florida Bar Association to address situations in which a spouse failed to remove a former spouse from beneficiary status subsequent to the dissolution of marriage and prior to the spouse's death.

[2] According to the Staff Director of the Judiciary Committee of the Florida House of Representatives, this clause was added to avoid running afoul of Section 514 of ERISA, which preempts state regulation relating to retirement plans subject to ERISA.

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