Supreme Court Upholds Distribution to Former Spouse Despite Divorce Decree

The U.S. Supreme Court has ruled unanimously that when a plan participant's former spouse is still named as sole beneficiary at the time of the participant's death, the plan administrator should distribute the benefits as directed in the beneficiary designation, even if the former spouse has previously waived his or her rights to plan benefits as part of a divorce settlement.

Kennedy v. Plan Administrator for DuPont Savings and Investment Plan presented a factual situation familiar to most plan administrators. The participant and his wife divorced, and in their property settlement the participant's wife relinquished her rights to his 401(k) plan account. However, the participant never changed his beneficiary designation, which continued to list his former wife as his sole beneficiary. When the participant died, the plan administrator paid the entire account to the former wife in accordance with the beneficiary designation on file with the plan, and the participant's daughter sued on behalf of the estate. In a rare 9-0 vote, the Supreme Court held that the plan administrator had complied with its duty to follow the plan documents under ERISA by distributing the account proceeds to the former wife on the basis of the beneficiary designation, despite having been advised of the divorce decree.

In ruling for the plan administrator, the Court resolved conflicting opinions from the lower courts and stressed the need for plan administrators to be able to rely on the plan's own administrative procedures in determining who is entitled to a deceased participant's benefit, and not to be required to interpret other documents that might contradict the participant's beneficiary designation on file with the plan. The participant in this case, the Court held, had ample opportunity to change his beneficiary designation and had failed to do so.

In light of the *Kennedy* decision, plan administrators may wish to consider the following points:

- Plan administrators may wish to review their SPDs and other communications to make sure the communications advise divorced participants that they need to revise their beneficiary designations if they wish to remove their former spouse, since *Kennedy* makes it clear that external papers such as divorce decrees or property settlements cannot contradict beneficiary designations on file with a plan under the plan's procedures.

- Some plans provide that a designation of a participant's spouse as the participant's beneficiary is automatically revoked if the participant and the spouse become divorced. Such provisions should continue to be valid under *Kennedy*, although *Kennedy* makes clear that such a provision is not required. The administrator should confirm that the plan's provisions concerning the revocation of designations are clear and that the plan administers the provisions as written.

For example, if the plan provides for automatic revocation of a beneficiary designation upon divorce, it may impose a duty upon the plan administrator to determine the marital status of a deceased participant.

- Plan sponsors or administrators may consider adopting a formal waiver procedure as part of their plan procedures. Resolving a split in the lower courts, the *Kennedy* Court held that a beneficiary may waive his or her right to a participant's benefit without violating ERISA's rule against the assignment of plan benefits. The DuPont plan involved in *Kennedy* had a formal procedure that could be used by a beneficiary to waive receipt of a benefit, and the fact that the divorce decree did not comply with the plan's waiver procedure was one of the factors considered by the Court.

- Although *Kennedy* dealt with a 401(k) plan, the rationale of the case is equally applicable to defined benefit plans and death benefit plans in which the beneficiary designation is governed by ERISA.

- The one remaining exception to the rule that a plan administrator never has to look beyond the beneficiary designation on file may be the fortunately rare situation in which the participant is murdered by his or her beneficiary. The lower courts have generally held that "slayer" laws precluding a beneficiary from profiting from his or her crime are applicable to an ERISA plan, but the Supreme Court expressly reserved this issue in *Kennedy*.

For more information regarding the application of the Kennedy *decision to your plans, please contact the Seyfarth Shaw attorney with whom you work, or any Employee Benefits or ERISA Litigation attorney on our website at www.seyfarth.com.*

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