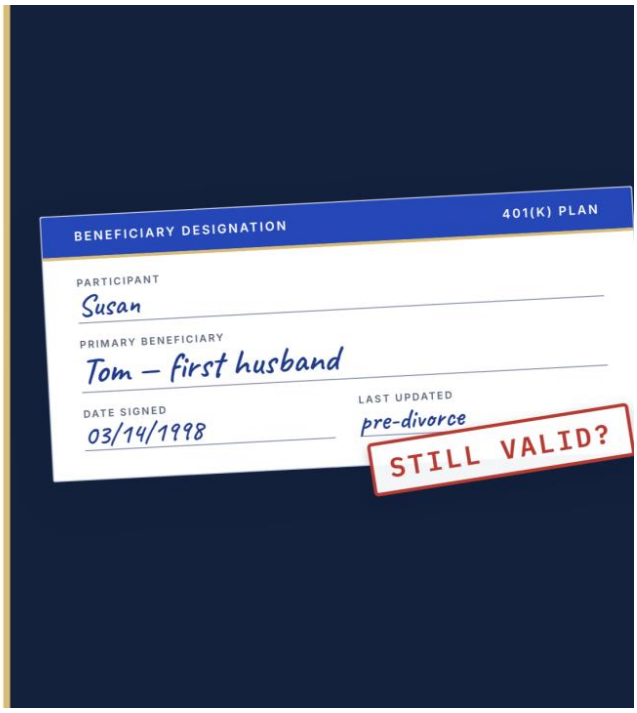
BEYOND "I DO" · WEEK 2 OF 8

Till Death,

or Till the Beneficiary Form Says *Otherwise.*

A divorce decree ends the marriage. It doesn't always end the paperwork.



Written by [Akshaya Senthil Kumar]

Last week, Susan left behind three valid documents that didn't agree. This week, we open the drawer she forgot about.

Remember her old 401(k), still naming her first husband, Tom? They divorced decades ago, and nobody mentioned a beneficiary form.

Susan dies, and the plan administrator cuts a check to Tom.

Her children are stunned: "But they're divorced. Doesn't the law cut him out automatically?" Mark, her husband of ten years, is stunned too: "But I'm her spouse." And Tom, who hasn't thought about this plan since the Clinton administration, is delighted.

Here's the twist: Tom has a legitimate claim. Mark may have a better one. The children may have neither.

Issue-spotting hat back on. What do you see?

1. The ex-spouse who wins on paperwork

Many states, New York and Pennsylvania included, have statutes that treat an ex-spouse as having predeceased the account holder for purposes of beneficiary designations (EPTL 5-1.4; 20 Pa.C.S. § 6111.2). For life insurance and IRAs, that's the rule.

Employer plans governed by ERISA are the major exception. ERISA makes the plan follow its documents and overrides state revocation statutes (Egelhoff, U.S. 2001; Sauers, Pa. 2011). In Kennedy v. DuPont Plan (2009), the Supreme Court upheld paying an ex-wife who had given up her interest in the divorce, because the plan documents still named her.

On the other hand, payment is not always the end of the matter. If the divorce papers contain a waiver, the former spouse's estate may be able to sue the payee to enforce it. The Pennsylvania Supreme Court (In re Estate of Easterday, 2019) and the Third Circuit (Kensinger v. URL Pharma, Inc., 2012) have both allowed such claims.

Why it matters: the divorce decree dissolves the marriage, but it does not per se amend the beneficiary designation. The federal plan is bound by its own records. So, keep them up-to-date to avoid any potential litigation.

2. The "waiver" signed by the wrong person

Now to Mark. Susan's prenup had him waive "all rights" in her property. Last week, we saw that this language may not reach death. For a 401(k), it doesn't matter either way.

Federal law makes the surviving spouse the default beneficiary of a typical 401(k). A spouse can give that up only by written consent that identifies the beneficiary, acknowledges the effect, and is witnessed by a notary or plan representative (29 U.S.C. § 1055(c)(2)). The consent has to come from a spouse, and a fiancé isn't one yet (Hurwitz v. Sher, 2d Cir. 1992; Treas. Reg. § 1.401(a)-20, Q&A-28).

So unless Mark signed a proper consent after the wedding relinquishing his right to Susan's 401(k), he may have a stronger claim. A prenup can promise a later consent. It cannot be the consent.

3. Same people, same mistake, opposite result

Say Susan also had a rollover IRA, still naming Tom. IRAs aren't ERISA plans, so state law applies. In New York and Pennsylvania, divorce revoked Tom's designation, and the account passes as if he had predeceased her.

The 401(k) pays Tom. The IRA does not. A revocation statute is only as strong as the asset it can reach.

What I tell clients and colleagues

- **Divorced?** Update every beneficiary form now. The decree alone won't do it, and the plan will not guess your intent.
- **Holding more than one type of account?** Treat employer plans separately from IRAs and individual insurance. Different law governs each, and the answers can be opposite.
- **Need a spouse to waive plan rights?** Get a post-marriage consent that meets the ERISA formalities, ideally with the prenup committing the spouse to sign it.
- **Remarried?** Check what the plan says about earlier designations and whether your new spouse has to consent.
- **Dividing a retirement plan?** Don't rely on the decree alone. Get a Qualified Domestic Relations Order (QDRO) that spells out survivor rights.

Would you be surprised by who is named as the beneficiary of your 401(k)/ IRA? When did you last check?

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