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TOPIC: Intention to Change Beneficiaries Insufficient if not Executed in the Manner Prescribed

CITATION: [Shoenthal et al. v. Shoenthal et al.](#), 2016 WL 3452687, No. A16A0398 (Ct. App. GA, June 22, 2016); [Evanisa S. Fox v. Lincoln Financial Group and Mary Ellen Scarpone](#), 2015 WL 751362, NO. A-3189-13T4; (Sup. Ct. NJ, App. Div. Feb. 24, 2015).

SUMMARY: At the death of their father, a judge, his two daughters sued his pension board and their mother, alleging that the board wrongfully disbursed, and their mother improperly claimed, their deceased father’s entire pension benefits when their father had designated that money be paid to them.

The trial court held that the judge did not provide proper notice to the board to make an effective change in beneficiaries from their mother to the daughters. This appeals court agreed with the trial court that the judge did not provide written notice to the board, as required by the Georgia pension code, and thus did not effectuate the change in beneficiaries.

RELEVANCE: Although this case doesn't pertain directly to life insurance, it does provide important lessons to life insurance professionals and every member of the estate planning team. It proves that compliance with policy provisions, or in this situation the requirements to change the beneficiary of a pension plan, is essential. Put another way, the failure to comply with the manner of change prescribed will almost inevitably be fatal to a beneficiary change. For an example of a life insurance case where the attempted beneficiary change was incomplete, see *WRNewswire 15.3.09* describing the *Fox* case cited above.

Well-settled case law requires some objective showing that the deceased intended to change the policy's beneficiary. For instance, generally, an insured can change the beneficiary on an insurance policy *only* by notifying the insurer in accordance with the provisions in the policy, or by *substantially complying* with the policy's terms. The traditional rule regarding change of beneficiary designations under a life insurance policy is that the interest of the designated beneficiary is a vested property right, payable if he or she survives the insured, which can be divested only by a change of beneficiary in the mode and manner prescribed by the policy. Of course, this also protects the insurer, which relies on the policy terms to pay the proceeds to the designated beneficiary. So ordinarily, demonstrated intention to change beneficiaries will be insufficient - if not executed strictly in the manner prescribed in the policy for affecting such a change.

This general rule may be modified where there is "substantial compliance" with the method prescribed in the policy to change the beneficiary. Substantial compliance requires an insured to make *every reasonable effort* to affect a change of beneficiary. The doctrine of substantial compliance provides that even if the policy owner had not *exactly* complied with the policy's requirements for changing beneficiaries, the proceeds could be claimed if he "substantially complied" with the terms of the insurance contract. That requires (1) "a clear expression of the insured's intention to change beneficiaries," and (2) a concrete attempt by the insured to carry out his intention *as far as was reasonably in his power*, i.e., undertaking positive action which is for all practical purposes similar to the action required by the change of beneficiary provisions of the policy.

WARNING: Saying so doesn't make it so. An insured's mere verbal expression of an intent to change a life insurance beneficiary designation will not be effective. Mere verbal expressions of intent to change a beneficiary designation will almost always be ineffective. Courts will almost certainly conclude in such cases that such a verbal expression of intent does not constitute substantial compliance.

Finally, once again, we're reminded of the emotional and financial cost of a failure "To Get AROUND TO IT." Clients should be told: If you want to change your life insurance or retirement plan beneficiaries, DO IT! DO IT NOW! DO IT RIGHT! Do it in strict and complete compliance with the appropriate contract and instructions. Get it done – in writing – and get it approved in writing – and do it as quickly as possible.

FACTS: According to court records, Judge Shoenthal was married to Fran, and they had two daughters, the plaintiffs. Judge Shoenthal was employed by DeKalb County from July 1998 until he died on December 1, 2013, as a result of complications from a back surgery he had on November 27, 2013.

About a month before his scheduled surgery, Judge Shoenthal changed the beneficiaries on employer-provided life insurance policies by reducing Fran's share of the benefit from 100 percent to 50 percent and designating that each of his daughters receive 25 percent of the benefit.

On the morning of November 18, 2013, Judge Shoenthal e-mailed the clerk of the pension board, inquiring about changing the beneficiaries on his pension plan. Specifically, Judge Shoenthal asked, "[w]hat happens to my pension if I die – does it go to my wife? Can I split it between my wife and my children? Second, if I'm able to split it, what do I need to do to modify the beneficiary?"

The clerk responded by informing Judge Shoenthal that he could change designated beneficiaries by completing a form available on a county website. Judge Shoenthal replied that he would complete a new beneficiary form.

That same month, Judge Shoenthal told his sister that he had revised his will to reflect his "intention to leave everything to his daughters and little to nothing to Fran." He told his sister that he was in the process of changing the beneficiary designation for his pension.

On November 25, 2013, Judge Shoenthal completed and signed the change-of-beneficiary form, designating his daughters as the sole beneficiaries. He also handwrote, "I want each of my children to receive 50% of my pension." Attached to the change-of-beneficiary form was a Post-It note containing the board's address. Judge Shoenthal placed the form on or in his desk.

Over the next two days, Judge Shoenthal worked in his office and handled repairs to his car. He had back surgery on November 27, was released from the hospital the next day, and died from an embolism on December 1, 2013. Judge Shoenthal never mailed or delivered the change-of-beneficiary form.

Around the time Judge Shoenthal was released from the hospital, Fran discovered that he had changed or intended to change the beneficiaries on his pension plan. About a week after Judge Shoenthal's death, Fran submitted an application to receive Judge Shoenthal's pension benefits. Later that month, the change-of-beneficiary form was found on or in Judge Shoenthal's desk, and Fran was told about it. On January 1, 2014, the board began sending monthly pension payments to Fran.

A few days later, one of the judge's daughters hand-delivered the signed change-of-beneficiary form to the board and requested that it be honored. The board informed the daughters that it would not recognize the change-of-beneficiary form, but did not provide a reason.

The daughters then filed this lawsuit. In their suit, they sought a declaratory judgment that they were the lawful beneficiaries of Judge Shoenthal's pension benefits. They also requested the court to compel the board to stop making payments to Fran and to begin making payments to them on the theory that the board had breached Judge Shoenthal's employment contract, of which his pension benefits were a part. They raised claims of fraud, conversion, and money had and received against Fran, and sought attorneys' fees against all the defendants.

The board countered that the state's pension code unambiguously provided that changes to designated beneficiaries must be in writing and must be presented to the board by the participant. The board also argued that, even if the relevant code section was ambiguous, the trial court was required to defer to the board's interpretation of that section as mandating the participant to present the form because such an interpretation was a reasonable construction.

The judge's widow, Fran, requested the court to adopt the board's arguments.

The trial court granted the board's and Fran's motions, concluding that the completed change-of-beneficiary form did not constitute written notice from Judge Shoenthal, because neither he nor someone acting at his direction ever mailed or hand-delivered the form to the board. The trial court also concluded that the completed form never converted to written notice because it was not hand-delivered or placed in the mail by Judge Shoenthal or by a third party at his direction.

This appeal followed. The appeals court reasoned as follows:

The daughters' burden as Plaintiffs was to show that they — not Fran — are the true beneficiaries and therefore the Board erred in declining to designate them as the beneficiaries of Judge Shoenthal's pension benefits. But regulations of a benefit association that provide the method of change of beneficiary must be complied with by the plan participant to make the change effectual, and the failure to comply with such regulations renders ineffectual an attempt to change the beneficiary. Here, state (Georgia) Pension Code pertinently provides:

All participants shall, on a form provided for that purpose, designate a person or persons to receive the benefits payable in the event of the death of the participant. Such person or persons shall be the beneficiary of the participant.

The participant may from time to time change the beneficiary by written notice to the pension board, and upon the receipt by the pension board of such change, the rights of all previously designated beneficiaries to receive any benefit under this plan shall cease.

Typically, when a court considers the text of a statute or ordinance, it affords the text its "plain and ordinary meaning," view the text in the context in which it appears, and read it in its "most natural and reasonable way, as an ordinary speaker of the English language would."

Here, the trial court determined that Judge Shoenthal did not comply with the pension code to effectuate a change in designated beneficiaries. Specifically, he did not "change the beneficiary by written notice to the pension board." The requirement that notice be "to the pension board" necessarily requires communication of the notice to the board. Although he completed a board form to change the designated beneficiaries, he left the form on or in his desk.

Although the statute here does not specify how a form must be delivered to the board — whether by fax, email, regular mail, or hand-delivery — the statute clearly requires some method of delivery in order to provide notice to the board. Indeed, the very next clause predicates effectiveness of the change upon receipt of the written notice by the board. The point is that failure to deliver the completed document constitutes failure to provide written notice to the intended recipient.

Judge Shoenthal's completion of the change-of-beneficiary form – sitting on his desk – could have had several meanings: It might have shown his intent to change beneficiaries. On the other hand, his failure to deliver the document may also be evidence that he changed his mind about changing beneficiaries. Absent delivery, the court had no way of knowing his true intent. But according to the court, "We can say with certainty that his failure to send the document to the board meant that he did not "change the beneficiary by written notice to the pension board."

The daughters then argued that that the board in essence received written notice when one of them hand-delivered the note after Judge Shoenthal's death. But, they never claimed that Judge Shoenthal directed them to do so. Nor did they allege that Judge Shoenthal acted in a way so as to make the board believe they had the authority to submit the form on his behalf. In other words, they never claimed or proved they were acting as their father's agents in delivering the change-of-beneficiary form. (An agency relationship arises wherever one person, expressly or by implication, authorizes another to act for him or subsequently ratifies the acts of another in his behalf. There may be apparent authority when the statements or conduct of the alleged principal reasonably cause the third party to believe that the principal consents to have the act done on his behalf by the purported agent.) And even if they did allege an agency relationship, any agency to deliver the form was terminated upon Judge Shoenthal's death, well before the form was delivered by one of the daughters to the board. Because Judge Shoenthal did not give written notice to the board of his desire to change beneficiaries and Plaintiffs had no authority to provide notice after his death, Judge Shoenthal did not effectively change his beneficiaries.

What about the "Substantial Compliance" doctrine? This is the proposition that when an employee does everything he can to effectuate a change of beneficiary of an employee benefit plan, the beneficiary change would take effect even though the employee died prior to full completion of the change?

(With respect to life insurance, the “substantial compliance” rule is that if the insured has done substantially all that is required of him, or all that he is able to do, to affect a change of beneficiary, and all that remains to be done is a ministerial action of the association, the change will take effect though the details are not completed before the death of the insured.) Here, Judge Shoenthal did not do “substantially all that was required of him” or “all that he was able to do.” He completed the form two days before his surgery, and despite tending to other matters in his office and repairing his car before his surgery, he did not place the form in the mail or otherwise cause it to be delivered. In fact Judge Shoenthal elected to work in his office and attend to auto repairs instead of dropping the completed form in the mail. This did not evidence that he did all he could have done to affect delivery.

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