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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire #15.08.13 was written by Linas Sudzius of Advanced Underwriting Consultants.*

TOPIC: Handwritten Note Insufficient to Effect Beneficiary Change

CITATION: *Hearing v. Minnesota Life Insurance Company*, No. 14-2819 (8th Cir. July 16, 2015).

SUMMARY: After his divorce in 1998, Jon Holloway bought an insurance policy on his life. He named his sister the beneficiary, apparently so his ex-wife would have no potential ability to handle the death proceeds on behalf of Jon's daughter Nikki.

Jon died in 2013 having left his sister the beneficiary of the life policy. He also left a handwritten note purporting to leave all his estate to Nikki, except for a specific bequest to another relative. Both the sister and Nikki made claim on the life insurance death proceeds, and a federal court action resulted.

The federal district court granted summary judgment in favor of Jon's sister—the named beneficiary. The Court of Appeals affirmed.

RELEVANCE: Professional agents who work with insured policy owners who have minor children often have to deal with issues surrounding minors as potential policy beneficiaries. If a minor ends up being a beneficiary, and is entitled to the death proceeds, he or she will not be old enough to exercise legal control over it. In most cases a court-supervised *guardianship* or *conservatorship* will need to be created for the benefit of the minor.

The process of creating a guardianship or conservatorship usually requires a legally responsible adult to file a petition with the court to seek permission to act. If family members are not in agreement with regard to who should act—especially in a case like this where the insured is divorced from the minor's mother--the court proceeding could be contested. The cost of a family fight could deplete assets otherwise available for the minor.

What are the alternatives?

An insured policy owner can create a *testamentary trust* for a minor child's benefit inside of the last will or living trust documents, and that trust may be named primary or contingent beneficiary of the life

proceeds. If a client cannot create such a trust, the insured policy owner may decide to use a ready-made custodianship under the Uniform Transfers to Minors Act (UTMA).

It's not completely clear in the *Hearing* case why the insured's sister was named the direct beneficiary, but it may have been that the insured trusted her to use the life insurance money for his daughter's benefit. If so, this case points out the potential flaw in naming a family member as beneficiary and hoping—in some cases, the hope won't match what really happens.

In any event, Jon could have solved the beneficiary ambiguity by changing beneficiary of the life policy to his daughter at the same time he wrote the note about his estate intentions. He didn't do that. Perhaps if his agent had been in regular touch with him, the beneficiary form would have been updated and litigation would have been avoided.

FACTS: Pursuant to a decree upon a divorce from his wife, Jon Holloway purchased a life insurance policy in the amount of $100,000 from Minnesota Life Insurance Company in 1998. The divorce decree required Jon to maintain a life insurance policy payable to his children until his child support obligations ended. Jon designated his sister, Joetta Hearing, beneficiary of the policy. The policy application stated that Jon was "[n]aming sister as beneficiary so ex-wife can't control the death proceeds." Jon's child support obligations ended in 2008.

Jon died in 2013, leaving a handwritten note dated September 18, 2012, addressed to his daughter Nikole and signed by Jon. The note directed her to "sell everything you don't want and bank it," and said, "Chris would like the 44 Back The Rest you Get." At the end, the note listed the policy number for the Minnesota Life insurance policy, and the name and telephone number of the insurance agent.

Nikole submitted the note to Minnesota Life after Jon's death and claimed a right to the proceeds of the policy. Minnesota Life advised Nikole and Hearing of their competing claims.

The court granted summary judgment for Hearing, reasoning that Jon did not take adequate steps to change the beneficiary from Hearing to Holloway under the policy's change of beneficiary requirements.

Nikole Holloway appealed, raising two arguments before the Eighth Circuit Court of Appeals:

1. Jon's handwritten note satisfied the legal requirements to change the policy's beneficiary.

2. Joetta Hearing was required to use the death proceeds in a constructive trust for Nikole's benefit.

The appeals court rejected both arguments and affirmed the decision of the district court. With respect to the first issue, it noted that the Minnesota Life contract required a beneficiary change to be filed by the policy owner with the insurance company prior to death for it to be valid. That requirement was not met.

With regard to the second issue, the court said:

Holloway alleges that Hearing acted in "bad faith" and abused Jon's confidence by keeping the proceeds even though Jon "entrusted [her] to see to it that Holloway ... would receive the life insurance proceeds in the event of his death." Yet Holloway presented no evidence that Hearing agreed to give the proceeds

to Holloway, or that Jon asked Hearing to do so. Jon's statement in his policy that he was naming Hearing as beneficiary "so ex-wife can't control the death proceeds" does not establish that Jon entrusted Hearing to deliver the proceeds to Holloway. Insofar as the divorce decree's requirement that Jon maintain life insurance for his children might have given Holloway an interest in the proceeds, the requirement was premised on Jon's child support obligation, and that obligation ended before Jon's death. Holloway thus failed to establish her right to a constructive trust.

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