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TOPIC: Ex-Spouse Removed as Beneficiary Under New York State Law

CITES: *Estate of Sugg*, 2015 NY Slip Op 25220 (NY Surrogate's Court, June 29, 2015); New York Estates, Powers and Trust Law Section 5-1.4.

SUMMARY: Joseph Sugg, the owner of a hybrid Prudential life insurance and annuity contract, died in 2013 having left his ex-wife Ursula the named beneficiary of the $118,000 death value. Joseph's sister Janet, as his estate administrator and sole named heir, brought suit over the proper payout of the death proceeds.

Janet asserted that New York law treats an ex-spouse as having pre-deceased the policy owner for the purpose of the beneficiary designation. Ursula countered that the parties' divorce decree was the governing document, and that the designation of herself as beneficiary was still valid.

The court held that New York law had effectively removed ex-wife Ursula as the beneficiary of the policy upon the Suggs's divorce, and ordered that the policy proceeds be paid to Janet.

RELEVANCE: We have written in the past (see *WRNewswires* 14.09.22 and 14.03.25) about situations where courts have looked to the language of a divorce decree to decide the proper beneficiary of a life insurance policy. We have also described how some states have laws automatically removing ex-spouses as beneficiaries from life and annuity policies, while others do not.

New York law automatically removes an ex-spouse as a beneficiary unless the divorce decree clearly says otherwise. In this case, although the ex-spouse made a case that the decree meant for her to get the policy's death benefit, the court decided the language from the divorce court wasn't clear enough to override the law.

This decision is one more reminder of how important it is for clients to

1. consciously change beneficiary designations (or not) right after they get divorced and

2. take care to review divorce decree language—with the life insurance professional and attorney—to make sure everyone understands what is intended with regard to existing beneficiary designations and any required new coverage.

FACTS: Joseph died on November 28, 2013. He had divorced Ursula Sugg in 2002, and did not remarry. His will left his entire estate to his sister Janet, who was also named administrator of his probate estate.

In their divorce proceeding, Ursula and Joseph had entered into a settlement stipulation in which all of their liquid assets were to be distributed by a 60/40 formula, with decedent receiving 60 percent of those assets and Ursula receiving 40 percent.

As part of the original divorce judgment, the divorce court had directed a 40 percent distribution of the Prudential policy that is the subject of this case to Ursula.

At some point thereafter, Prudential informed decedent and Ursula that they could not split the policy as directed because it was a life insurance annuity. To resolve this problem, in 2004 the divorce court entered an order declaring that Ursula was entitled to $47,289.60 from the policy, which represented 40 percent of policy's value at the time. At the time, Ursula owned Joseph $39,000, so the order required Joseph to pay over about $8,000 to Ursula to settle the debt.

The rest of the order language provided (with clarifying edits and emphasis added):

> Upon the effectuation of this Order **the entire balance remaining** in [decedent's] Prudential Account[X]**shall be his sole and separate property** and [Ursula] will cooperate with any requirements to remove her name from the account, if required. The entire balance remaining in Prudential Account [X] shall not be subject to the provisions of the prior Orders granted by this Court on or about March 2, 2001 enjoining the parties from withdrawing from this account subject to the further Orders of this court which prior Order granted March 2, 2001 shall extinguish upon the receipt of this Order by the Administrators of the said account.
>
> **Upon the effectuation of this Order [decedent] may remove [Ursula] as the beneficiary** on the Prudential Annuity contract (No.[Y])

There were no further orders pertaining to the policy. At the time of decedent's death, Ursula was still designated as the policy beneficiary. Ursula applied for the death benefits under the policy, and Prudential paid them to her.

A few months later, Janet filed a petition to compel Ursula to turn over to the estate 60 percent of the death benefits which she had received as the designated beneficiary of a hybrid life and annuity policy of insurance on decedent's life. The 60 percent claim was based on the division of the Suggs's assets pursuant to their divorce decree in 2002, which mentioned the policy at issue. Ursula refused and asked the court for a speedy ruling in her favor.

Janet responded by petitioning the court for the whole death benefit, asserting that under New York Law Ursula's entitlement to the policy proceeds as beneficiary terminated upon her divorce from decedent.

Ursula argued that the 2004 post-divorce court order specifically pointed out the right of the Joseph to remove her as beneficiary of the Prudential policy, but that he chose not to do so. She cited EPTL 5–1.4(a)(1), which provides in relevant part (with emphasis added):

> **Except as provided by the express terms of a governing instrument**, a **divorce** … **revokes** any revocable (1) disposition or appointment of property made by a divorced individual to, or for

> the benefit of, the former spouse, including, but not limited to, a disposition or appointment by will, by security registration in beneficiary form (TOD), by **beneficiary designation in a life insurance policy**….

Ursula maintained that the 2004 post-divorce court order language trumped the default provision of New York law, removing an ex-spouse as insurance policy beneficiary.

Janet argued that the 2004 order did not clearly maintain that Ursula was to remain beneficiary of the policy, and thus the general rule—that the beneficiary-spouse is removed as beneficiary on divorce—should apply.

The court agreed with Janet and ordered Ursula to pay over the policy's death proceeds.

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