# WRMarketplace
## An AALU Washington Report

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The *WRMarketplace* is created exclusively for AALU Members by the AALU staff and Greenberg Traurig, one of the nation's leading tax and wealth management law firms. The *WRMarketplace* provides deep insight into trends and events impacting the use of life insurance products, including key take-aways, for AALU members, clients and advisors.

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**TOPIC: Handling Beneficiary Designations: What to Know.**

**MARKET TREND:** With the ever-increasing use of corporate retirement plans, plan administrators need to appreciate the importance of providing a clear and understandable beneficiary designation process.

**SYNOPSIS:** Plan participants must properly designate beneficiaries at the time of plan enrollment and keep such designations current to ensure loved ones or other intended designees receive the intended benefits. The deceiving simplicity of designating plan beneficiaries, however, can sometimes lead to unwanted outcomes under the law, particularly when participants experience life-changing events and fail to change their beneficiary designations in accordance with the plan's required procedures. The terms of the plan documents and the plan's administrative processes will govern to ensure obligations under ERISA are satisfied.

**TAKE AWAYS:** Selecting an initial beneficiary is important, as is making sure any designation under a retirement plan remains consistent with the owner's intent over time. Recent case law highlights the importance of fiduciaries reviewing plan documents to ensure clear administrative procedures are established for making beneficiary designations, including when changes must be made through written beneficiary designation forms. In addition, plan administrators should be aware of common circumstances that can cause confusion with respect to the continued application of, or changes to, beneficiary designations, such as in cases of divorce or simultaneous death, and take steps to minimize this possible confusion.

***MAJOR REFERENCES:*** *Mays-Williams v. Williams (No. 13-35069, decided 1/28/2015).*

ERISA plans often have numerous forms that govern the participants' rights, the fiduciary's legal obligations, and the plan's administrative rules. A key feature of any retirement plan is the designation of persons or entities that will receive the plan benefits upon the participant's death. The extent to which a beneficiary designation form controls the payment of benefits, however, can depend upon how the plan incorporates the form into its formal procedures. As shown by a recent case of first impression before the Ninth Circuit, the language in a plan's governing documents can be extremely important in giving effect to a participant's intended designations.

***BENEFICIARY DESIGNATION BASICS***

The beneficiary designation form is a tool used by retirement plans to create legal entitlements for individuals. How these forms are actually created, used, modified and collected will vary from plan to plan. Beneficiary designation forms, however, may not be considered "plan documents," and the actual documents pursuant to which the plan is administered, including the summary plan description, as well as the plan's administrative practices and procedures, may need to be considered when determining a participant's beneficiaries for plan purposes – and may even take precedence over the contents of the actual beneficiary designation forms.

***RECENT CASE LAW***

In *Mays-Williams v. Williams*,[1] the Ninth Circuit Court of Appeals recently considered the extent to which a beneficiary designation form constitutes an ERISA plan document, which governs the plan administrator's award of benefits under ERISA § 404(a)(1)(D).

At issue was the determination of the proper person entitled to receive proceeds from two employee benefit plans. The employee (Mr. Williams) had worked for the Xerox Corporation for over 30 years and participated in several company ERISA benefit programs. Although Mr. Williams had formally designated his wife as his beneficiary after their marriage, the couple later divorced, and Mr. Williams sought to remove his ex-wife as his beneficiary by calling the plan administrator and asking that his son become his beneficiary. The plan administrator sent Mr. Williams forms that requested that he sign and return them to confirm the selection of his son as his beneficiary. Mr. Williams never acted on the forms, and so, at his death, his ex-wife remained formally listed as the plan beneficiary.

Both Mr. Williams' son and ex-wife made claims to the administrator. The administrator inter-pleaded both parties so that a federal district court would determine who was entitled to the proceeds. Mr. Williams' ex-wife moved for summary judgment, arguing that his failure to fill out and return the beneficiary designation forms resulted in there being no legal change in her beneficiary status. The district court granted her summary judgment motion, and the son appealed.

The Ninth Circuit held that summary judgment was not appropriate as there was a factual issue whether, under state law, Mr. Williams had complied with the plan documents' requirement for changing his beneficiary designation. The court began its analysis by noting that the Xerox plans contained specific terms and procedures governing the designation of beneficiaries. The outlined process differed in terms of what was required of unmarried versus married participants, although the plan gave the administrator explicit discretion to construe and interpret the plan provisions as necessary to carry out its obligations. However, even though the plan terms included language about submitting beneficiary designation forms, the summary plan description also indicated that a participant could call its benefit center "to complete or change [the] beneficiary designation at any time."

Under ERISA § 404(a)(1)(D), an ERISA fiduciary must distribute benefits "in accordance with the documents and instruments governing the plan." The Ninth Circuit analyzed whether the beneficiary designation forms used with the Xerox plan constituted "plan documents." That precise issue had been raised in *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*,[2] but the Supreme Court declined to issue a definitive rule. Consequently, the Ninth Circuit considered a number of ERISA cases in determining what should be considered a plan document. The court looked closely at ERISA § 104(b)(4), which requires plan administrators to provide certain plan documents to participants. That provision includes documents that explain benefit entitlements, procedures for obtaining benefits, etc., but only encompasses formal documents that govern the plan's operation. Because the circuit court

reasoned that ERISA § 404(a)(1)(D) is meant to encompass only a narrow set of documents, it held that beneficiary designation forms were outside the category of "plan documents."

Accordingly, in *Mays-Williams,* the Ninth Circuit ruled that the terms of the documents governing the plan and the plan's administrative practices could be interpreted to allow an unmarried participant to designate a beneficiary in a manner other than completing a beneficiary designation form, thereby requiring a trial on the merits. It reached this conclusion on the rationale that none of the Xerox plan documents incorporated the beneficiary designation forms. In fact, nothing in the governing plan documents prevented unmarried participants from designating beneficiaries via telephonic instructions. Therefore, the court reversed and remanded the case back to the district court for further consideration.

## *PRACTICAL CONSIDERATIONS*

The case makes it apparent that plan sponsors need to draft their plan documents to set forth a clear beneficiary designation procedure. Fiduciaries also should familiarize themselves with the terms of the relevant plan documents to ensure that they can properly discharge their duties in distributing death benefits. In addition, plan administrators should be aware of common circumstances that can cause confusion with respect to the continued application of, or changes to, beneficiary designations, such as in cases of divorce or simultaneous death, and take steps to minimize this possible confusion.

### *Automatic Enrollment*

The rise in the use of automatic enrollment by plans has resulted in an increase of deficient beneficiary designations. Although beneficiary designation forms are a standard part of plan enrollment, automatic enrollment may not require completion and submission of the beneficiary designation forms to complete the enrollment process.

Plan administrators should develop rules that apply for plans with automatic enrollment when participants fail to submit a completed beneficiary designation form. Some plans identify beneficiaries on participant statements or other plan documents in an effort to highlight the participant's formal designation on file and raise awareness when a designation is missing. Other plans re-solicit designation at periodic intervals or upon the occurrence of life-changing events, such as divorce, that come to the awareness of the plan administrator in an effort to avoid designations becoming stale based upon changes in a participant's life circumstances.

### *Electronic Forms*

The use of electronic forms by plan administrators in the enrollment process can result in fewer mistakes and higher completion of beneficiary designations. An electronic process can avoid common errors involved in the traditional paper process, such as incorrect total percentage splits among designees, and provide for upfront collection of beneficiary Social Security numbers and addresses. One area in which the electronic process is not currently effective, however, is for the designation of a non-spousal beneficiary by a married participant, as this designation requires notarized spousal consent which, in turn, requires the use of paper forms.

### *Automatic Revocations*

To deal with common situations in which confusion may arise as to the intended beneficiary, some plan documents and summary plan descriptions incorporate provisions that cause automatic revocation of a participant's designation upon the occurrence of certain events. For example, divorce, simultaneous death, or murder of a participant by a beneficiary can be written

into the plan design as triggers that cause automatic revocation of a beneficiary's previous designation. The provisions are coupled with a clear delineation of a hierarchy for establishing a default beneficiary in the event a new one is not properly designated.

## *TAKE AWAYS*

Selecting an initial beneficiary is important, as is making sure any designation under a retirement plan remains consistent with the owner's intent over time. Recent case law highlights the importance of fiduciaries reviewing plan documents to ensure clear administrative procedures are established for making beneficiary designations, including when changes must be made through written beneficiary designation forms. In addition, plan administrators should be aware of common circumstances that can cause confusion with respect to the continued application of, or changes to, beneficiary designations, such as in cases of divorce or simultaneous death, and take steps to minimize this possible confusion.

## NOTES

[1] No. 13-35069, decided 1/28/2015.
[2] 555 U.S. 285 (2009).

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