Insurance and Divorce

Going through a divorce is one of the biggest stresses in life. It becomes even more so when there are children involved. So many changes that need to be done and so much to go through, it's no wonder insurance needs get forgotten. When people separate, they often remain connected — usually through a co-parenting relationship or because of ongoing child or spousal support obligations. In Canada, 41% of all divorces have children involved.

Here is a real case that ended up going to the Supreme Court for a decision:

A couple were going through a divorce — part of the agreement was for the husband to continue his life insurance and his ex wife would be the beneficiary — it was agreed that she would continue the premium payments for the policy, the cost of which was $509 a year.

Two years later, the ex-husband moved in with a new partner and she became his common-law spouse. He decided to change the beneficiary to reflect his new partner, and did so without telling his ex-wife. Ten years later, he died, leaving his common-law partner $500,000. Needless to say, his ex-wife was angry as she had been paying the premiums all these years just in case something happened and she needed the money for their children.

She brought the case up to the insurance company and they sided with the common-law spouse. This escalated to the courts and they decided that, although the insurance company was right in paying the common-law spouse according to the beneficiary designation, the divorce agreement required the husband to designate the ex-wife as beneficiary so the insurance money would go to her.

We learned several things about insurance — the first being that the divorce agreement superseded the contract with the insurance company. Where the divorce agreement specified a beneficiary for the insurance, it was not up to the insured, in this case, the ex-husband, to change the beneficiary. The wife should have insisted she be made *irrevocable beneficiary* as then he would not have been allowed to change her name as beneficiary without her permission.

Another option might have been for the ex-husband to have left the insurance money to his children, *in trust*. This means choosing someone to represent the children's best interests until they are of legal age to receive the money.

Another thing we learned is that insurance was used in the divorce as a means for the ex-husband to continue support should he pass — the insurance proceeds can be used for spousal and/or child support.

Divorce doesn't change an insurance beneficiary designation unless the divorce decree stipulates it is to change.

If you are including an insurance policy as part of a divorce agreement, please remember the following:

- *Irrevocable* beneficiary is the safest way to ensure you receive the money from your ex-spouse's policy. The designation can't be changed without the beneficiary's agreement.
- If you are using your insurance to set up a trust account for your children, make sure it is with a neutral party as trustee, whose sole responsibility will be to ensure the children receive the money from the policy.
- Having a life insurance policy as part of a divorce agreement is a great way to ensure you and/or your children are taken care of in the event of a death.

This article was written by Jane Cotnam in partnership with our association advisor, Kaven Kafshbarghi of *Your Friend With Benefits Inc*.