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All's fair in love & war...yet another case for revoking a beneficiary designation properly on divorce

The case of Love v. Love, 2011 SKQB 176 is yet another example that loose ends and paperwork need to be completed at the time of divorce, especially when a beneficiary designation is involved.

Mr. and Mrs. Love divorced in 2006. They had signed Minutes of Settlement and an Interspousal Agreement (separation agreement) to settle their matrimonial issues which did not address explicitly insurance proceeds or any life insurance policy.

Mr. Love had a group life insurance policy and had, while married, designated his wife Lori as beneficiary. In March of 2008, Mr. Love sent an email to Kelly Schmidt, the payroll manager and HR benefits administrator for his employer. The subject line of the email was "change of beneficiary." In the email, Mr. Love indicated that due to his divorce he wished to change the beneficiary of his pension etc. and requested the appropriate paperwork.

Ms. Schmidt forwarded the change form to Mr. Love, but did not explain the importance of signing and completing the form. The change forms were found after his death in 2009 partially completed; the part relating specifically to the life insurance designation was not completed.

Mr. and Mrs. Love had four children. Their son Thomas contested the payout of the life insurance proceeds to his mother Lori Love.

The court first considered whether the email sent by Mr. Love was a declaration or whether the uncompleted forms found after his death met the requirements under the Saskatchewan Insurance Act to change the beneficiary designation on the policy.

With respect to the email, the court considered a case that we have already looked at – Re Buckmeyer Estate (For more information, see As a Matter of Law from – April 2008 - Can the contents of an e-mail constitute a declaration?). In that case, the court determined that the email constituted a signed declaration under the Saskatchewan Insurance Act (the Act) and the application was successful. The email was found to have adequately identified the particular insurance policy to warrant the change.

In Mr. Love's case, there was no reference to the insurance policy within the email; the only reference was to changing the "pension etc." The court found this not to be descriptive enough to find in favour of a valid declaration.

The court also considered whether the separation agreement or divorce had any effect on the designation. The court reviewed a number of cases that have been discussed in a previous AAMOL article (For more information, see As a Matter of Law from March 2006 - Does a general release of entitlement equal a beneficiary designation change?). The court concluded that the separation agreement was not a declaration under the Act citing that the agreement, although signed, did not identify the insurance contract or describe it and no endorsement was made on the policy as a result of the separation agreement. General expressions or clauses in agreements were found by the court not to be enough. A declaration must be clearly expressed in order to effect a change.

The case is another example of why clients need to think about beneficiary designations when divorced. A

court is not prepared to find an intention to make a change or to speculate as to the change. That is something a client must attend to themselves.

These columns are current as of the time of writing, but are not updated for subsequent changes in legislation unless specifically noted.

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