



## What Does Life Insurance Have to Do With Divorce?

Divorce is an event that most of us hope we'll never have to experience. Unfortunately, it is a sad reality of life for many. But what does life insurance have to do with divorce? Life insurance and divorce intersect in several ways. Let's take a brief look at some of the most common occurrences.

**Requirement of Divorce:** Perhaps the most frequent use of life insurance during a divorce, the court may mandate one or both ex-spouses to own life insurance on their lives but naming the other as the beneficiary, as a condition of the divorce settlement or as part of the divorce decree. That is particularly true when there are custodial issues involving minor children or disabled adult children, or when one spouse has sacrificed gainful employment and a career to care for children and the household. Existing policies may be required to be maintained. If existing insurance is not available, the court may require its purchase. Typically, the requirement of purchasing and maintaining life insurance remains in effect for at least a certain number of years, generally until child support or alimony obligations are fulfilled. On rare occasions, life insurance may be required to be maintained for an extended period, including for life.

**Marital Asset:** Existing life insurance may be considered a marital asset subject to division and distribution. That's especially true with life insurance products that build cash values. Depending upon the size of the policy and how long the policy has been in force, the amount of cash values subject to division and distribution may be significant. Also, the cash values of a policy owned by one spouse could be used to offset the value of other assets owned by the other spouse, especially when each would like to keep the particular asset. Cash value policies may also be surrendered with the proceeds divided as part of the financial settlement. Note, however, that the surrender of a policy could have tax implications depending upon the circumstances.

## Financial Support and Guaranteed Legacy:

Another sad reality of divorce is that it is not uncommon to hear stories in which children of former marriages are not treated as well, financially, as the children from a current marriage. Indeed, a study done by the National Bureau of Economic Research concluded that “Stepparents and no-contact parents in complex families may be less motivated than parents in traditional families to provide resources to children with whom they do not share their genes or have not shared their homes.”<sup>1</sup> Placing life insurance into a trust for the benefit of the children of a former marriage, or naming those children (assuming they are adults) as beneficiaries of a life insurance policy, can help to ensure that they receive their inheritance and financial support, as if there never was a divorce.

Purchasing and maintaining life insurance is a way to ensure an inheritance, financial legacy, and the financial support of children from the former marriage, who may get lost in the world of subsequent marriages and blended families.

**Beneficiary Designations:** Failing to change the beneficiary designation of a life insurance policy is one of the most common mistakes made post-divorce. While numerous states have statutes that automatically revoke beneficiary designations in favor of an ex-spouse upon a divorce in various financial products, including life insurance, many do not. So don’t assume that because you’re divorced, your ex-spouse will no longer receive the benefits of a life insurance policy you own on your life. You should always change the beneficiary on the policy upon a divorce, assuming that the court does not require maintenance of the policy as described above.

Note, however, that regardless of whether your state has such a revocation statute, these state statutes do not override federal law. For example, in the case of *Hillman v Maretta*,<sup>2</sup> Warren Hillman divorced Judy Maretta and then remarried to Jacqueline Hillman. At the time of his marriage to Judy, Warren was a federal employee and had a life insurance policy issued pursuant to the Federal Employees’ Group Life Insurance Act of 1954 (FEGLI), naming Judy as the beneficiary. After the divorce, he failed to remove Judy as the beneficiary and, at his death, the insurance proceeds went to Judy. Jacqueline sued claiming that Virginia’s


revocation statute was effective to remove Judy as the beneficiary post-divorce. The case eventually made its way to the U.S. Supreme Court which unanimously held that federal law pre-empts state law. FEGLI specifically requires payment of the proceeds to the named beneficiary and to the extent there is no named beneficiary, designates who shall receive the proceeds and in what order of precedence. So, while it may not have been fair, Judy was the rightful beneficiary.

The lesson is that regardless of whether there are laws in place that may control, it is always best practice to review beneficiary designations of life insurance, as well as any other financial product or account, upon a divorce.

## Conclusion

Divorce isn’t an event that we would want to wish on anyone. It can be messy and involve many financial moving parts, and be complicated by the family issues. Life insurance plays an important role in the divorce process as well as post-divorce for the financial care and security of ex-spouses and children. Steps must be taken to evaluate life insurance needs and implement a strategy to protect all vulnerable parties.

## For More Information Contact:



**Your Security Mutual Life Insurance advisor can help to guide you through the life insurance maze. Your advisor will coordinate with your attorney and tax professional to review your situation and to determine the appropriate insurance course of action for you, your family and situation.**

<sup>1</sup>Francesconi, Marco, Robert A. Pollak, Domenico Tabasso. “Unequal Bequests.” NBER.org. [https://www.nber.org/system/files/working\\_papers/w21692/w21692.pdf](https://www.nber.org/system/files/working_papers/w21692/w21692.pdf) (accessed January 12, 2022)

<sup>2</sup>Hillman v Maretta, 569 U.S. 483 (2013).

The information presented is designed to provide general information regarding the subject matter covered. It is not intended to serve as legal, tax or other financial advice related to individual situations, because each person’s legal, tax and financial situation is different. Specific advice needs to be tailored to your particular situation. Therefore, please consult with your own attorney, tax professional and/or other advisors regarding your specific situation.

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