

## Legal Matters – March, 2009

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any questions regarding this article, you may contact Barry Evans at 281-557-1900 or you can email him at [barryevans@msn.com](mailto:barryevans@msn.com).



### Naming Beneficiaries

Your estate plan is in place. Or is it? Not if you have out-of-date beneficiaries on your financial accounts. The Supreme Court has agreed to hear the case of a woman suing her late father's pension plan for money she believes should be paid to her, not her mother – who was still listed as the sole beneficiary even though she forfeited rights to his pension in their divorce. This whole problem could have been easily prevented if the father had simply named the daughter as the beneficiary.

Accounts with beneficiary designations – such as IRAs, 401(k)s, insurance policies and annuities – aren't governed by your will. So even if you wrote an ex out of your will eons ago, he or she would still get, say, your IRA if you never changed the beneficiary. Review choices periodically, especially after major life events.

Specifically naming someone means the money can go straight to him or her, rather than through your estate – thus avoiding potential probate taxes, expenses, and legal battles. The beneficiary you designate can be any legally competent person or an entity – spouse, children, other friends and relatives, or a trust, a charity, a church, etc.

Having a will is not good enough – you still need to designate a beneficiary for your financial accounts. Insurance policies and other financial accounts have nothing to do with your will. This is because a will only applies to your "probate estate," which includes assets other than life insurance – investments, savings, or real estate, for example.

### Who to Name as Beneficiary, and How to Do It

Think carefully about who to name as beneficiary, and be sure to think about and name a secondary (contingent) beneficiary, the person who gets the money if the first person you name (primary beneficiary) dies before you or maybe at the same time (for example, in a car accident.) While it is common to name family members as beneficiaries, you don't have to. The most important thing is to think about your beneficiary decisions while keeping in mind the big picture of all your assets and financial planning.

When designating a beneficiary (or beneficiaries – you can name as many as you want, and the money can be divided among them), you have to do it correctly. Spelling out people's full names and their relationship to you is important.

There are a few things you should **not** do in naming your beneficiaries:

- Don't use exact dollar amounts, which can get outdated. Instead, use percentages, such as 50% (be sure they add up to 100%) or terms such as "evenly divided among."
- You should generally not name your estate as beneficiary, since that opens up all the probate problems – taxes, delays, legal questions, debts – that life insurance is meant to avoid.
- You also may not want to name minor children (under the age of 18) as beneficiaries, since they may need a legal guardian appointed by the court to manage their money.

You can use a trust as a beneficiary. A trust is a legal document that transfers money from one person (the grantor) to another person (the trustee) to be managed for the benefit of a third person (the beneficiary). Trusts are particularly useful if you want to provide for minor children, disabled relatives, or people who might be legally incompetent to manage money themselves.

**Editor's note:** *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*