

# Six Worst Mistakes to Make with Beneficiary Designations

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Beneficiary designations are a critical, though often undervalued, aspect of estate planning. Clients need to understand that a well drafted will or trust is generally insufficient to control the beneficiary of their retirement plan or IRA. Only a properly completed and accepted beneficiary designation can ensure that a client's wishes will be met.

Here are the worst mistakes:

■ *Not having any beneficiary designation.* Often the biggest error is not having a beneficiary designation at all. Anyone with a retirement account should have a designation, regardless of the account's value. Of course the importance of the tax planning inherent in a well-drafted designation is proportional to the amount of plan assets.

Many clients and attorneys are surprised to learn that plan and IRA documents set forth default beneficiaries. A common default beneficiary is the "estate," which is undesirable because it does not allow payments to be "stretched" over the life of the beneficiary. Other

common defaults may effectively disinherit certain family members or otherwise produce results counter to the plan owner's wishes.

■ *Not selecting contingent beneficiaries.* To avoid the default provisions, it is important to select alternate beneficiaries in case the primary beneficiary does not survive. The best designations are structured from the outset to account for the death of each beneficiary.

■ *Failing to properly complete the broker's designation form and confirm that it and the attorney-drafted designations have been accepted.* Beneficiary designations must be filed with the plan's provider. Most providers have their own designation forms. These forms are notoriously oversimplified, providing for the distribution of significant assets in just a few lines. Thus, it is critical to attach a detailed attorney-drafted designation to the provider's form.

After completion, it is essential to follow up with the provider to confirm that the designation has been accepted. We recommend such confirmation be in writing. Unfortunately many clients think they can handle filing their designa-

tions without assistance and often fail to do so properly. We recently learned of an IRA provider that, upon the IRA owner's death, located a 20-year-old designation but not the more recent designation that reflected the decedent's updated estate plan and wishes.

■ *Not regularly confirming that the correct designation is on file.* We no longer live in a world of small town bankers and brokers. With retirement accounts being handled by larger companies that merge on a fairly regular basis, it is important to check back with the broker every three to five years to ensure that the correct designation is still on file. Just because a beneficiary designation form was accepted does not mean that it won't be subsequently lost or misplaced, causing serious problems upon the client's death. We recently learned that a major brokerage house in the course of converting software after a merger had simply typed in the primary beneficiaries for their clients and misplaced the original signed designations.

■ *Not updating designations*

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*after major life events.* When there is divorce or death in the family, beneficiary designations are likely not at the forefront of a client's minds. Clients should review their designations following such major life events to ensure they still work properly. Clients should not assume that an external document will be sufficient to alter an outdated beneficiary designation. For example, in *Kennedy v. DuPont*, 129 S. Ct. 865 (2009), the Supreme Court held that, despite a divorce decree, which waived the wife's right to benefits from her ex-husband's retirement plan, the wife was nevertheless entitled to benefits because her ex-husband had failed to change his plan's designation, which named her as the primary beneficiary.

■ *Failing to utilize designations to their full potential.* While beneficiary designations are important for all clients, they are especially important for those with significant retirement plan assets. These assets can be some of the worst, or the best, assets in a client's estate, depending upon the designation. If properly drafted, the stretch IRA can provide a safety net for a client's spouse and possibly descendants due to the impact of

tax free compounding over a long period of time.

It is important to be aware that brokerage houses often send beneficiaries designation forms to select their own beneficiaries. To avoid this and allow the plan owner to select subsequent beneficiaries, a trust would need to be designated as the beneficiary. Naming a trust as beneficiary is also an effective way of controlling the rate at which plan assets are distributed to beneficiaries who a plan owner may be concerned about receiving the funds outright. Unfortunately, naming a trust as a beneficiary also means navigating unduly complex IRS regulations.

A properly drafted and monitored beneficiary designation can provide significant tax benefits while ensuring that a client's wishes are met and that the estate administration goes smoothly.

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