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THE EFFECT OF DIVORCE ON LIFE INSURANCE POLICIES*

RICHARD P. SMITH**

Over the past thirty years the writer as life insurance company counsel has witnessed the many problems incident to insurance policies in the divorce court that constantly plague insurance companies. Most, if not all, of these problems can be eliminated by appropriate provisions in the settlement agreement and divorce decree. This solution, however, can become an effective remedy only through the process of educating members of the bar in the complexities of the life insurance policy. In the light of this experience, the writer will examine some of the problems of the insurance company which arise because the divorce decree or property settlement agreement do not adequately set forth the respective policy rights of the insured, his divorced wife and his children. This paper will also suggest to the general practitioner items relating to life insurance that should be covered in settlement agreements and divorce decrees, including specimen clauses contained in the Appendix. This will permit the practitioner to serve his clients better and at the same time eliminate some of the problems with which life insurance companies are continually faced.

The proper disposition of life insurance policies is a frequently overlooked item in divorce settlements, and many times the settlement does not cover all of the contingencies that may occur during the life of a policy because the practitioner does not have a clear understanding of the large bundle of rights contained in a life insurance contract. This results in incomplete or ambiguous provisions for disposition of insurance, and it is followed by argumentative correspondence among the insurance company and the divorced parties or their lawyers as to the intent of agreement. If the provisions of the property settlement agreement or decree are inadequate or unclear as to the intent of the divorced parties, the only safe course for the company to follow is to permit no

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action under the policy without obtaining the consent, if possible, of all interested persons. Or in the case of a court decree, the company should permit no action without obtaining, if legally possible, a modification of the decree approving the settlement agreement. Either remedy is normally most difficult to pursue because of the antagonistic relationship of the parties and sometimes because it is legally impossible.

Since the primary purpose of this paper is to suggest procedures in "preventive law" for the general practitioner, a brief examination will first be made of some of the legal principles which affect life insurance policies involved in divorce proceedings. It is not proposed to cover in this discussion any treatment of the tax consequences arising out of ownership and beneficiary arrangements made in connection with a divorce. Authoritative treatment of tax considerations may be found in several recent papers.¹

The following matters are important considerations in any discussion of the subject of this paper and will provide a frame of reference for the recommendations to be made hereafter:

1. The nature of a life insurance policy.
2. General rule of law governing effect of divorce upon life insurance.
3. Statutory exceptions to the general rule.
4. Jurisdiction of the courts to order disposition of life insurance policies.

NATURE OF A LIFE INSURANCE POLICY

What is a life insurance policy? Too frequently life insurance is regarded only as a contract to pay a benefit upon the death of the life insured. This is frequently the case when the disposition of life insurance is covered in a property settlement agreement or divorce decree. In many instances, life insurance is overlooked completely when divorced parties are listing their current assets which are to be divided upon separation or divorce. A life insurance contract contains a large bundle of rights in addition to the provision for payment upon death of the insured. The insurance policy itself does not confer any rights or powers; it is merely evidence of a contract obligation on the part of the life insurance company. All life insurance policies, except term insurance, contain so-called non-forfeiture options which normally provide that under certain conditions the

1. Walzer, *The Disposition of Life Insurance in Divorce Settlements*, 46 TAXES 248 (1968), also appears in 541 INS. L.J. 92 (1968); Bowe, *A Review of Federal Tax Laws Relating to Life Insurance Policies*, PROCEEDINGS OF LEGAL SECTION OF AMERICAN LIFE CONVENTION 32 (1960); *Divorce and Separation*, BUREAU OF NATIONAL AFFAIRS, TAX MANAGEMENT PORTFOLIO 95.

insured may elect to take the cash value or elect to place the policy under the extended term insurance option or the reduced paid-up option. Other benefits normally found in a life insurance policy depending, of course, upon the terms of the individual contract, include the right to borrow against the cash value either in cash or to pay premiums, the right to receive dividends and to change the method of applying dividends, the right to make the automatic premium loan feature operative or to revoke it, the right to change the beneficiary, the right to elect settlement options, and the right to convert a term policy to a permanent plan of insurance. Also, many policies today contain special benefits such as guaranteed insurability riders, disability benefits, mortgage protection riders, and provisions for payment of additional death benefits in the event of accidental death.

It is apparent that the modern life insurance policy is not a simple contract wherein the only basic elements are an obligation on the part of the insurance company to pay the amount insured upon death in return for the payment of specified premiums by the insured. The lawyer, when examining a life insurance policy that he intends to incorporate in a property settlement agreement, should inspect the policy most carefully. He should inspect the policy to see if it includes such special features as a family income or family protection rider or one of the many special features which life insurance companies have devised in order to meet certain needs of the insuring public or to meet competition. The general practitioner must also understand when dealing with life insurance policies that there are plans of insurance which provide for payment of benefits other than upon the death of the insured. It is important that the property settlement agreement or divorce decree recognize, when such be the case, that a policy will mature as an endowment on a specified date or that a policy will mature as a retirement income with provision for payment of monthly income to the insured. Failure to understand the complete content of a life insurance policy can only result in an incomplete or inadequate disposition of such policy in a property settlement agreement or decree and endless problems for the insurance company and the persons having an interest in the policy.

GENERAL RULE OF LAW

The rule in most jurisdictions is that divorce does not affect the right of the beneficiary to receive the proceeds under an ordinary policy of life insurance where the husband has designated his wife as beneficiary by name or with the additional words, "wife."²

2. Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457 (1876).

The law is well-established in most jurisdictions, that the use of the word "wife," in connection with a named beneficiary, is descriptive only, and that the name, but not the description or identification, identifies the person entitled to the proceeds of the policy.³ In the absence of a specific statute directing otherwise, the provisions of the insurance policy in question control the rights and benefits of the owner and the designated beneficiary; and a divorce, in and of itself, does not affect this control. Since divorce in most jurisdictions does not affect the rights of divorced parties in a life insurance policy, the disposition of such insurance in accordance with the desires of the parties can only be achieved by clear expression of such intent in the decree or property settlement agreement.

STATUTORY EXCEPTIONS TO GENERAL RULE

In four states, Michigan, Minnesota, Missouri and New York, statutes⁴ have been enacted under which divorce affects the rights of a spouse-beneficiary however designated. In Michigan the statute purports to change the beneficiary of the policy to the estate of the husband upon divorce. On the other hand, the statutes of Missouri, Minnesota and New York provide in effect that the interest of a spouse designated as irrevocable beneficiary be changed upon divorce to that of revocable beneficiary subject to change by the insured. An attorney handling a divorce in one of these states should consider the effect of the applicable statute in making any disposition of insurance.

JURISDICTION OF COURTS TO ORDER DISPOSITION OF LIFE POLICIES

Many interesting questions of jurisdiction may arise where the court directs a transfer of all rights of ownership in the policy to the wife or awards to her the cash value of the policy.⁵ Questions may also arise concerning the authority of the court to make provision in the decree for insurance benefits for children of the divorced parties. The authority of the court to direct a change in ownership of the policy, to effect a change of beneficiary, or to distribute the values of the policy will depend in some instances upon statute. In some cases it will depend upon whether the court has personal jurisdiction of both husband and wife and in certain situations may depend upon the language of the policy itself. Since

3. Connecticut Mut. Life Ins. Co. v. Schaefer, 94 U.S. 457 (1876); Lloyd v. Royal Union Mut. Life Ins. Co., 245 F. 162 (1917); *rev'd* 254 F. 407 (1918); Overhiser v. Overhiser, 63 Ohio St. 77, 57 N.E. 965 (1900).

4. MICH. STAT. ANN. § 25.131 (1967); MINN. STAT. ANN. 61A.12 §§ 2-4 (1968). Mo. STAT. § 376.560 (1968); N.Y. DOM. REL. LAW § 177 (McKinney's 1964); *See also*, Annotations and Comments in *Proceedings of International Claims Ass.* at 127-133 (1965).

5. Dorety, DIVORCE AND POLICY OWNERSHIP, 10 ALIC Proceedings, 431.

the insurance company is not a party in the divorce proceedings nor a party to the property settlement agreement, the company cannot take the responsibility to decide whether the court did in fact and in law have jurisdiction in a particular case. This usually means that in the absence of using interpleader as a remedy, the insurance company will recognize no action without the consent of all interested parties. This is because the rights awarded the wife by decree may be questioned by the husband on the ground of lack of jurisdiction of the court; but on the other hand the company cannot safely ignore the decree since at some later date the validity of the decree may be upheld. Therefore, it is recommended that the decree which seeks to change the rights of the owner or beneficiary under a life insurance policy should be drafted so as to direct the owner to make the desired change and to execute all forms required by the insurance company to complete the change rather than attempt to be self-executing.

If the decree describes a particular policy and if the husband fails to make the change ordered by the court, the divorced wife may acquire an equitable interest in the proceeds of the policy.⁶ On the other hand, if the decree does not describe any specific policy and if the husband fails to make the change as directed, the wife may have nothing more than a cause of action against the estate of the husband for breach of the undertaking.⁷ One possible solution to avoid this latter result would be to draft the decree so that in the event the husband does not comply with the order, the court through an appropriate court officer is authorized to execute on the husband's behalf all the necessary forms and the husband is ordered to deliver possession of the policy where this is needed to effect the change.

SOME RECOMMENDATIONS

The remainder of this paper will be devoted to recommendations and guidelines for the general practitioner in his preparation of a property settlement agreement or in the drafting of language for a divorce decree. The following is a checklist of points to be covered in the agreement or decree, when applicable:

1. Who shall pay premiums and for what duration?
2. Who shall be beneficiary?
3. Upon happening of what events may husband change beneficiary?

6. *Waxman v. Citizens Nat. Trust & Savings Bank*, 123 Cal. App. 2d 145, 266 P.2d 48 (1954); *Wright v. Wright*, 8 Life Cases 2d 638.

7. *Jacoby v. Jacoby*, 69 S.D. 432, 11 N.W.2d 135 (1943); *Aetna Life Ins. Co. v. McMonies*, 161 Ore. 183, 88 P.2d 290 (1939).

- a. Death or remarriage of wife.
 - b. Emancipation of children by age or otherwise.
4. Who may deal with the policy during lifetime of insured as to the following?
- a. Cash value.
 - b. Loan value.
 - c. Dividends.
 - d. Non-forfeiture options.
 - e. Change of beneficiary.
 - f. Election of settlement options.
 - g. Removal or addition of special benefits such as disability, accidental death benefit, family protection rider, etc.
 - h. Renewal or conversion of term policy.
 - i. Payee of endowment value at maturity under an endowment policy or payee of monthly income on retirement date under a retirement income policy.
5. How may rights under property settlement agreement or decree be altered or modified?

The first consideration of the attorney who will draft the settlement agreement is to examine the husband's insurance portfolio to determine whether existing insurance is sufficient to carry out the settlement plan of the parties or whether new insurance must be secured. It is strongly recommended that, when possible, specific policies be identified in the agreement. This permits easy identification of the insurance referred to in the agreement and permits the insurance company to know what policies are affected by the settlement agreement. Frequently an agreement will simply direct the husband to maintain a specified amount of insurance for the benefit of his wife or children or to continue a life insurance policy of a stated amount—but with no particular policy identified. In these circumstances it is impossible for the insurance company to determine which policies were intended to satisfy the requirements of the settlement agreement and the basic protection intended to be provided by the insurance is destroyed. Furthermore, if no particular policy is identified and the husband breaches his obligation under the agreement the wife may wind up with nothing more than a cause of action against the husband's estate which may or may not be solvent.

Once the insurance has been determined and identified the next concern of the legal draftsman should be to describe the interests of the parties in the insurance and their respective rights. The agreement should always specify who is obligated to pay premiums on

the policies and for what period of time. If the husband does not wish to remain obligated to continue this insurance in force for the benefit of his divorced wife and children for their entire lifetime the agreement should clearly state when this obligation will terminate.

The next important point to be covered is the beneficiary designation. Except in unusual circumstances, the wife should be designated as sole primary beneficiary. Many problems arise when an attempt is made to provide insurance protection for the children of the marriage unless there is clear provision for the exercise of policy rights during their minority. The provisions most commonly used in a property settlement agreement simply state that the wife shall be designated as irrevocable beneficiary or that the husband agrees to designate the wife as beneficiary and continue the policy in force for her benefit. Whether the term "irrevocable" is used in the agreement or not, it can be reasonably argued that in either event the wife has a vested interest which cannot be defeated without her consent except as may be expressly provided in the settlement agreement. The failure to define clearly in the agreement the respective rights of the wife as beneficiary and the husband as policyowner frequently leads to considerable disagreement between the insurance company and the owner of the insurance or his attorney as to what rights the owner may exercise without obtaining the consent of the beneficiary. Where the rights are not clearly defined the insurance company will normally follow the safe course and permit no dealings without the express consent of all interested parties.

Although it is usually the intent of the parties that the husband not be permitted to remove the wife as beneficiary until he has carried out all of his obligations under the agreement or decree, it is recommended that the wife not be named as "irrevocable" beneficiary on the policy but that her interest as beneficiary be protected by limiting the rights of the owner of the policy. One objection to designating the wife as irrevocable beneficiary in the policy is that some policies contain a specific description of the interest of an irrevocable beneficiary which may or may not be consistent with the intent of the parties in the agreement. Furthermore, to designate the wife as irrevocable beneficiary without further description may give the wife a greater interest than that intended in the property settlement agreement and the husband may be denied the right to exercise any rights or privileges during the entire lifetime of his divorced wife without her consent. Obviously, if she were to remarry, it would not be expected that he would be obligated to continue to designate her as irrevocable beneficiary. Therefore, it is usually preferable simply to designate the wife as beneficiary and at the same time endorse the policy with a provision which limits

the rights of the husband as owner of the policy. A sample of such provision is attached to the Appendix of this paper.⁸

One very important consideration which is frequently overlooked is the question of who will control the policy during the lifetime of the insured and who shall be entitled to exercise the various rights and options available under the policy. From the insurance company's standpoint and frequently because of tax advantages flowing to the husband the preferable arrangement is to have the policy transferred absolutely to the wife. Although any standard absolute assignment form may be sufficient to accomplish this, it is recommended that the insurance company be requested to furnish an appropriate form so there will be no defect in the instrument of transfer because of peculiar language in the policy. Once the wife becomes the owner she presumably has the right to deal with the policy in any way she sees fit. In this situation the insurance company is generally free to deal with the wife as owner without any further regard to the property settlement agreement or divorce decree.

Occasionally, the parties will attempt to attach certain conditions to such transfer and these again give rise to problems for the insurance company. For example, the husband may agree to assign his policy to his wife but upon condition that if and when she remarries the policy will either be transferred back to him or to the children. In most of these situations the original instrument of transfer is not self-executing as to the subsequent transfer and the person holding a contingent interest must secure an assignment or some similar evidence of transfer from the wife in order to acquire clear title to the policy. If the wife refuses to sign the necessary papers (and she may do so just for spite) the husband or the children, as the case may be, must seek relief through appropriate legal action. In the meantime there have probably been volumes of correspondence between the insurance company and the insured concerning his right to deal with the insurance. The insured will argue once the conditions of the agreement have been met that he should be recognized as unrestricted owner even though certain requirements of the policy have not been complied with or he will ask the company to waive such requirements. It is urged that a lawyer attempting to follow the conditional assignment route proceed with extreme caution and prepare the language of the settlement agreement with great care.

Although there may be Federal Income and Federal Estate tax advantages to the husband in making an absolute transfer of the insurance to his divorced wife, other practical considerations very often motivate the husband to retain ownership of the policy in his

8. See Form No. 1 in this Appendix.

own name. If the insurance is to be maintained for the benefit of the wife, the husband normally wishes to regain ownership and control of the policy in the event the wife predeceases him or remarries. If the policy is to be continued for the benefit of the children, the husband will usually wish to regain control after his obligation to support the children has terminated. For these reasons the majority of property settlement agreements today are drafted so as to give the wife or children a vested interest as beneficiaries leaving the ownership in the insured-husband. This is the source of the major problem to the insurance company when the agreement or decree does not adequately describe the rights of the respective parties. The most frequent problems arise because of the failure to indicate which, if any, rights the insured may exercise without obtaining the consent of the beneficiary.

It is generally understood that when a person is designated as irrevocable beneficiary, the owner of the policy does not have the right to change the beneficiary or to take action which would alter or diminish in any way the interest of such beneficiary without the beneficiary's consent.⁹ Many policies themselves contain limitations upon the rights of the owner when a beneficiary is designated as irrevocable. The same result should obtain if the husband simply agrees to designate his wife as beneficiary or to continue the insurance for her benefit without reserving to himself any specific rights to deal with such insurance.¹⁰ Too frequently, however, the insured-husband or his attorney will complain to the insurance company that this was not the intent of the parties when the company refuses to permit the insured to release dividends or to borrow against the policy or to exercise some other policy option. The answer lies in describing clearly what rights the insured alone may exercise even though he is obligated to maintain the insurance for the benefit of his wife or children. Specimen provisions are included in the Appendix suggesting various clauses that may be used as a guide for the attorney drafting the property settlement agreement.¹¹ Which one is most appropriate will depend to a large extent upon the purpose for which the insurance is intended. In some instances the wife may have no objection to permitting the insured to exercise all rights under the policy including the right to borrow, provided he does not surrender the insurance nor permit it to lapse or terminate. On the other hand, the wife may not wish to have any of the lifetime values in the policy diminished in any way and in such event appropriate

9. M. COUCH, *INSURANCE* 28:37, at 660-662 (3rd ed.); W. VANCE, *HANDBOOK ON THE LIFE OF INSURANCE*.

10. *Mutual Life Ins. Co. v. Franck*, 50 P.2d 480 (1935); *Mahony v. Crocker*, 136 P.2d 810 (1943); *Prudential Ins. Co. v. Rader*, 98 F. Supp. 44 (1951); *Chilwell v. Chilwell*, 105 P.2d 122 (1940).

11. See Forms Nos. 2-5 in this Appendix.

restrictions upon the insured's right to deal with the insurance should be provided for in the decree or settlement agreement.

A consideration that is frequently overlooked and applies particularly when the insurance is to be maintained for the benefit of minor children is provision for modifying the obligations of the husband if and when circumstances change at a later date. If provision is made in a property settlement agreement for maintaining insurance for the benefit of children of the parties, it is questionable whether the husband and wife can by subsequent agreement between themselves alter the provisions insofar as they provide benefits for the children unless there is an express reservation of such right in the agreement.¹² It is suggested, therefore, that where the insurance is to be maintained for the benefit of children, the husband and wife should reserve to themselves in the agreement the right to modify or alter the provisions with respect to the children. Similar consideration should be given when benefits for the children are created by court decree.¹³ If jurisdiction of the court is established in the original divorce proceedings, it is suggested that the decree which awards benefits to the children provide that the court retain jurisdiction over the parties so as to be able to modify the terms of the original decree at a later date. Absent such retention of jurisdiction in the original proceedings, it may be necessary to have the children represented by legal guardians in any subsequent action that is taken to modify their interests.

These suggestions made by the writer are intended primarily to acquaint members of the bar with some of the problems that plague life insurance companies because of inadequate property settlement agreements or divorce decrees. If the attorney handling such cases will familiarize himself with the provisions of the insurance policy to be used in a divorce settlement, it is then an easy task for him to draft appropriate language for the agreement. This not only permits him to serve his client better but it also eliminates many problems for the insurance company. It is important when specific insurance policies are identified in the property settlement agreement that a copy of such agreement be forwarded to the home office of the insurance company. Since each company has its own forms and its own procedures for effecting policy changes, the attorney when forwarding a copy of the agreement should request the company to furnish the necessary forms to implement the provisions in the agreement. The important point is that the wishes of the parties be clearly expressed in the agreement, that such wishes be made known to the individual companies and the require-

12. *Scott v. Scott*, 86 N.E.2d 533, 535 (1949).

13. *Glaze v. Strength*, 186 Ga. 613, 198 S.E. 721 (1938); *Mosher v. Mosher*, 25 Wash.2d 778, 172 P.2d 259 (1946).

ments of the companies be complied with. Without such action at the time of the divorce, insurance problems may plague the parties and insurance companies for years to come.

APPENDIX

Form No. 1

Specimen Clause to be included in Property Settlement Agreement when Wife is to be designated as sole beneficiary and Husband is to retain ownership with limitations on his right to exercise privileges and options under the policy:

The Husband agrees to name Wife, if living at his death, as beneficiary of All American Life Insurance Company, Policy No. 000000 and to continue making premium payments on said policy during the lifetime of the policy. Husband hereby waives the right further to change the beneficiary under said policy during the lifetime of said Wife prior to her remarriage, except with her written consent. Husband also waives the right while Wife is designated as beneficiary to exercise any of the rights, privileges and options granted to the owner of the policy; all such rights, privileges and options may be exercised only by the said Husband with the written consent of said Wife. Upon the death or remarriage of said Wife, all such policy rights, privileges and options shall be exercised by the owner of the policy without restriction.

COMMENTS

This in effect makes the wife irrevocable beneficiary and completely restricts the rights of the owner prior to the death or remarriage of the wife. It will be the responsibility of the husband to furnish the insurance company with satisfactory evidence of the death or remarriage of the wife before he is permitted to remove the wife as beneficiary or otherwise deal with policy.

Form No. 2

Specimen Clause to be included in Property Settlement Agreement when Wife is designated as beneficiary and Husband is to be designated as policy owner with right to exercise certain privileges and options:

The Husband agrees to name Wife as beneficiary of All American Life Insurance Company, Policy No. 000000 and to continue making premium payments on said policy during the lifetime of the policy. Husband hereby waives the right further to change the beneficiary under said policy during the lifetime of said Wife, except with her written consent. Notwithstanding the interest of Wife as beneficiary, Husband shall have the right to exercise all rights, privileges and options (including the right to borrow) except the right to change the beneficiary and to surrender the policy; provided, however, that said policy shall not be permitted to lapse for failure to pay premiums or to make interest payments.

COMMENTS

This clause in effect makes the wife irrevocable beneficiary but gives the husband power to exercise all rights except the right to change beneficiary and to surrender the policy. The husband's powers can be made as restrictive or as complete as desired simply by listing the specific privileges and options to be granted. Refer to the checklist in the body of this paper. Also, if the policy is an Endowment or Retirement Income Contract, the above clause should include language such as "including right to receive endowment value at maturity" or "notwithstanding the interest of the wife as beneficiary, any installments of Retirement Income shall be paid when due solely to the owner of the policy but the wife shall be continued as beneficiary of any installments certain which fall due after the death of the insured". Likewise, if the policy

in question is a Term Contract, it is desirable to include a clause as "including the right to renew the policy as provided therein or to convert the policy as provided therein to another plan of insurance".

Form No. 3

Specimen Clause to be included in Property Settlement Agreement when policy is to be transferred absolutely to Wife and Husband is to retain no control:

The Husband agrees to assign and transfer absolutely All American Life Insurance Company Policy 000000 to Wife with full power to exercise all rights and privileges and options under said policy. The ownership of this policy shall not under any circumstances revert to the husband. Premiums under said policy shall be paid by (Husband) (Wife).

COMMENTS

This clause should be used only when husband intends to make an absolute and irrevocable transfer of the entire policy to the wife. This will normally be accomplished by absolute assignment or change of owner form furnished by the insurance company.

Form No. 4

Specimen Clause to be included in Property Settlement Agreement when Wife is to be designated as primary beneficiary and children as contingent beneficiaries:

The Husband hereby agrees to continue making premium payments on All American Life Insurance Company, Policy 000000 and to designate the Wife as beneficiary, if she shall survive the Husband. In the event the Wife shall predecease the Husband, the beneficiary of said policy shall be Tom Jones and Mary Jones, children, in equal shares, or to the survivor. Husband hereby waives the right further to change the beneficiary under said policy except with the written consent of the Wife. The interest of the children may be modified or terminated during the lifetime of the Wife by joint written consent of Husband and Wife. Husband also waives the right to exercise any of the rights, privileges and options granted to the owner of the policy except as herein provided; all such rights, privileges and options may be exercised during the lifetime of the Wife by the Husband only with the written consent of said Wife. Upon the death of said Wife, all such policy rights, privileges and options shall be exercised by the owner of the policy without restriction, except the right to change the beneficiary and to surrender the policy; provided, however, that said policy shall not be permitted to lapse for failure to pay premiums or to make interest payments.

COMMENTS

This clause in effect makes the wife irrevocable beneficiary and the children contingent beneficiaries whose interest may be changed by the husband and wife. The right to change the interest of the children is important when you have young children whose consent cannot be obtained. It is also desirable to consider what control the husband is to have after the death of the wife since the children may still be minors.

Form No. 5

Specimen Clause to be included in Property Settlement Agreement when

children are to be designated as primary beneficiaries until they reach majority and Husband is to be owner of policy with limited rights:

Husband hereby agrees to continue making premium payments on All American Life Insurance Company, Policy No. 000000 and to designate Mary Jones, Tom Jones and Henry Jones, children of Husband and Wife, in equal shares, until each child reaches his or her majority, at which time Husband's obligation to maintain such policy as to such child shall cease. Husband hereby waives the right further to change the designation of any such child as beneficiary until such child reaches majority. Husband also waives the right prior to the date when the youngest of said children reaches majority, to exercise any of the rights, privileges and options granted to the owner of the policy under the terms of said policy, except the right to borrow against said policy to pay premiums and the right to receive dividends or to change the method of applying dividends; provided, however, that said policy shall not be permitted to lapse for failure to pay premiums or to make interest payments.

COMMENTS

Other variations of this clause could permit termination of coverage upon emancipation for reasons other than age but in such event "emancipation" should be clearly defined. It is important where children are to be designated without reserving the right to change the beneficiary that any rights intended to be available to the owner of the policy during the minority of the children be clearly described in the property settlement agreement; otherwise, the vested interest of the children will restrict the exercise of any rights by the owner.