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GUIDEPOST

# Life Insurance Policy Beneficiary Designations

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# Life Insurance Policy Beneficiary Designations

Life insurance planning is highly technical in nature, involving contract, property, and tax law. A life insurance policy's beneficiary designation will control disposition of death benefit proceeds. As such, careful consideration should be given to a policy's beneficiary designation to ensure that policy proceeds pass according to the policyowner's wishes. The principles set forth below are meant as a general guide to properly completing a beneficiary designation.

## Life insurance beneficiary designations in general

### What are beneficiary classes, and what do they mean?

A beneficiary or group of beneficiaries may be classed as primary, secondary, tertiary, and so on. If two or more beneficiaries are named in a class, their shares in any amount payable may be stated. Unless shares are otherwise stated, surviving beneficiaries in the same class will have an equal share in the proceeds, or in any periodic income payments payable from these proceeds. Unless designated otherwise, all life insurance death benefit proceeds will be paid to surviving primary beneficiaries. If no primary beneficiaries survive, payment will be made to surviving secondary beneficiaries, and so on.

### What happens if there are no surviving beneficiaries?

If no beneficiary for any life insurance or other death benefit proceeds survives, the right to those proceeds will pass to the policyowner. If the policyowner was the insured, the right to those proceeds will pass to the policyowner's estate. If any beneficiary dies at the same time as the insured or policyowner or if the policy so provides, within fifteen days after such date, but before proof of the insured's or policyowner's death is received by New York Life, the proceeds will be paid as though that beneficiary died first.

### How can a beneficiary be changed?

The policyowner typically maintains the right to choose or change the beneficiary unless the policyowner makes an irrevocable designation.

#### *Irrevocable beneficiaries*

An irrevocable beneficiary cannot be changed without that beneficiary's consent. An irrevocable beneficiary designation may be required by a divorce decree, property settlement agreement, or other binding document.

Naming an irrevocable beneficiary may also restrict the policyowner's ability to exercise other rights under the policy without the beneficiary's consent, such as taking a loan or withdrawal, or using the policy as collateral.

## Specific life insurance beneficiary designations

### Beneficiary designations of people

#### *Individual people (no shares specified)*

- One primary beneficiary: Mary A. Smith, wife.
- Multiple primary beneficiaries: John B. Smith, father; and Elizabeth F. Smith, mother.
- Multiple primary beneficiaries – biological children with current spouse: Children born of the marriage to Mary A. Smith.
- One primary, one secondary, and one tertiary beneficiary – Primary: Mary A. Smith, wife; Secondary: Joan D. Smith, daughter; Tertiary: Elizabeth F. Smith, mother.
- One primary beneficiary and multiple secondary beneficiaries – Primary: Mary A. Smith, wife; Secondary: Children born of the marriage to Mary A. Smith.

- One primary beneficiary and multiple secondary beneficiaries (where the interest of any deceased secondary beneficiary is to pass to his/her children, if any, and if no such children, to the surviving secondary beneficiaries) – Primary: James B. Smith, husband; Secondary: John B. Smith and Eileen H. Smith, children. Any interest which a deceased secondary beneficiary would, if living, have had in policy proceeds shall be shared equally by any living children of that beneficiary.

#### *Individual people (shares specified)*

- Multiple primary beneficiaries and multiple secondary beneficiaries:

Primary: Mary A. Smith, wife, 50%  
 Joan D. Smith, daughter, 25%  
 Michael T. Smith, son, 25%

Secondary: John B. Smith, father, 75%  
 Elizabeth F. Smith, mother, 25%

#### *Minors as beneficiaries*

In general, minors may not sign legal documents or consent to activities concerning their property. When a minor is named as a beneficiary, any payment must be made to their court-appointed guardian.

All states have passed a version of either the Uniform Transfers to Minors Act (UTMA) or the Uniform Gifts to Minors Act (UGMA). Both UTMA and UGMA require that the property be transferred to the minor at the age stated under the specific state statute. The beneficiary designation must include the name and identifying information for the custodian, the child's name and relationship to the insured, and the name of the state act. Generally, only one custodian and one minor may be named for each designation.

**Examples:** Olive Jones, custodian under the Texas Uniform Transfers to Minors Act, F/B/O Sally Smith, daughter of the insured.

50% to Olive Jones, custodian under the Texas Uniform Transfers to Minors Act, F/B/O Sally Smith, daughter of the insured; and 50% to Lemon Smith, custodian under the Texas Uniform Transfers to Minors Act, F/B/O Benjamin Smith, son of the insured.

### **Beneficiary designation of an estate**

If the estate of the insured is to receive the death benefit, the proceeds will be payable to the executor (or administrator or personal representative). A specific individual should not be named in the beneficiary designation because the person filling the role of administering the estate won't be known until the insured dies.

**Examples:** Primary beneficiary – The estate of the insured.

Primary beneficiary – The executor of the insured's estate.

### **Beneficiary designation of a trust**

A beneficiary designation naming a trust must contain the full name of the trust; the month, day and year it was put into effect; and the name of the trustee.

**Example** - Revocable Living Trust – Individual Trustee:

Olive Jones, trustee of The Molly Smith Revocable Living Trust dated July 1, 2005 (as amended), or her successors in trust.

**Example** - Revocable Living Trust – Multiple Trustees:

Dean Smith and Olive Jones, trustees, or their successors in trust, under the Molly Smith Irrevocable Trust dated July 1, 2005.

**Example - Testamentary Trust:**

The trustee, or successors in trust, under the last will and testament of Molly Smith, insured, as admitted to probate. However, if Molly Smith dies without a valid will or if no trust is created within 90 days, the proceeds of this policy will be paid to the insured's executor or administrator.

Note: To name a trust other than a testamentary trust as beneficiary, the insurer often will require completion of a "Certification of Trust" or a "Statement of Trust" form.

**Beneficiary designation upon divorce**

It is important that the designation be written to comply with obligations under the divorce decree or property settlement agreement. Prudence suggests inclusion of a copy of the relevant part of the decree or judgment when submitting the application.

**Example - Settlement Agreement:**

Molly Smith, former spouse, irrevocably, an amount equal to the outstanding obligation under the property settlement agreement between the parties dated July 1, 2015, but at no time to exceed \$250,000. The remainder, if any, to Sherman Smith, son of the insured, if living, otherwise to Olive Jones, daughter of the insured, if living.

**Example - Alimony:**

If, at the time the proceeds become payable, there remains any outstanding obligation of the insured to pay alimony to Molly Smith, former spouse of the insured, as provided in the divorce decree dated July 1, 2015, then an amount equal to such outstanding obligations to Molly Smith, irrevocably. Remaining proceeds, if any, to be paid to the executor or administrator of the insured's estate.

**Beneficiary designation for key person planning**

A key person policy should be owned by and payable to the entity for whom the key person works.

**Example -** Smith and Jones, Addison, Texas, a partnership.

**Beneficiary designation for buy-sell planning**

A buy-sell arrangement that is designed to facilitate the transfer of business interests upon the occurrence of some event (death, permanent disability, termination of employment, bankruptcy, divorce, retirement, or other voluntary withdrawal, etc.) is often funded by life insurance. The buy-sell arrangement style will dictate the beneficiary designation.

**Example -** Entity Purchase: Smith and Jones, LLC, Addison, Texas, a Limited Liability Company.

**Example -** Cross Purchase: Olive Jones, Partner of the Insured.

**Example -** Unilateral Purchase by Key Employee or Successor-in-Interest: Dean Smith, employee of Smith and Jones, LLC, pursuant to a purchase agreement dated July 1, 2015.

**Example -** Trusteed Cross Purchase: Sherman Smith, trustee for Smith and Jones Trusteed Buy-Sell Agreement dated July 1, 2015, or his successors in trust.

**Beneficiary designation for executive bonus planning**

The business executive is the insured, and the business executive (or a third-party trust to avoid estate inclusion) is the policy owner. The business executive designates the beneficiary.

**Example -** Molly Smith, child of the insured(s).

Olive Jones, trustee of The Molly Smith Revocable Living Trust dated July 1, 2005 (as amended), or her successors in trust.

## Beneficiary designation for non-qualified deferred compensation

Non-qualified deferred compensation typically involves a policy on the life of a key employee that is owned by and payable to the entity for whom the key employee works.

**Example** - Smith and Jones Inc., a Texas corporation.

## Beneficiary designation for ERISA qualified plans

Both defined benefit plans and defined contribution plans can own insurance on the life of a plan participant (assuming the qualified plan document allows for life insurance as an investment option).

**Example** - Sherman Smith, trustee for Smith and Jones Profit Sharing Plan dated July 1, 2015, or his successors in trust.

Note: The plan trustee is beneficiary of policy cash value, and plan participant designates beneficiary of net amount at risk under the life insurance policy.

**Example** - Molly Smith, child of the insured(s).

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