Johnson, Bunce & Noble, P.C.

Client Newsletter

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JBN Attorneys

- Kent A. Noble
- Frederick A. Johnson
- James P. Johnson
- Matthew P. Jones
- Brian F. Johnson

Of Counsel

- Patrick T. Chambers
- Frederick D. Johnson

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- Probate
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Johnson, Bunce & Noble, P.C.
Executive Offices—Parkway Plaza
7800 N. Sommer St.
Suite 425
Peoria, IL 61615-1994

Phone: (309) 691-9650
Fax: (309) 691-9651
Web: www.peorialawyers.com

Beneficiary Designations

One of the most overlooked parts of the estate planning process is ensuring that accounts or insurance policies have the proper beneficiary designations. A beneficiary designation means that after one's death, money in an account or from an insurance policy will be distributed directly to someone (the "beneficiary") listed on the account.

Checking beneficiary designations is important because the money from that account or insurance policy will go directly to that beneficiary (outside of the probate process regardless of what a validly executed Last Will and Testament states).

There are a few common examples that show how beneficiary designations can drastically change one's estate plan.

Example 1: Predeceased child

Al was married to Kathy, but Kathy passed away before Al. They had two children during their marriage, Bob and Bill. Bob and Bill each get married and they have one child each. Bob passes away before Al, surviving are his spouse and child. Then Al dies.

After Kathy's death, Al obtained a life insurance policy for $250,000. The beneficiary designation on his policy is: "To my children".

Although it was probably Al's intent that should either of his two children pass away before him, that the proceeds be split equally between his surviving son and his deceased son's child, the likely outcome will be that Bill receives the total $250,000 to the exclusion of Bob's child.

The beneficiary designation only read "To my children" and many life insurance companies will interpret this phrase to mean to the children only if they are living. If one child has died, then the surviving child will receive the proceeds.

This unintended result could have been avoided if the beneficiary designation was properly drafted. Please be aware that most life insurance companies have different rules for how to word the designation. Thus, it is important to contact the company on a case-by-case basis to determine the proper wording in your case.

Example 2: Ex-spouse windfall

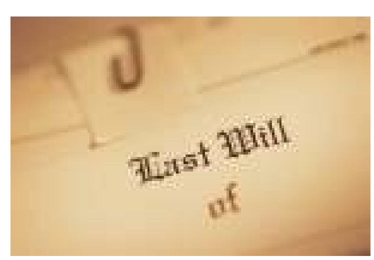
John and Mary are married. They had three children during their marriage. John and Mary later get a divorce. During the marriage, Mary obtained a life insurance policy. When she purchased the life insurance, she named John as the primary beneficiary. After the divorce, Mary had her Last Will and Testament changed to leave everything to her children and specifically excluded John from receiving anything from her estate. Mary then dies, surviving are John and the three children.

Although Mary's Last Will and Testament excluded John, he was still the primary beneficiary under the insurance policy. Therefore, John will receive the life insurance benefits if he applies to receive it.

This counterintuitive result can be understood due to the fact that a life insurance policy is a mere contract between the insurance company and the insured. According to the contract, John was the beneficiary and the insurance company is bound to make the benefit check payable to him.

This same example can relate beyond the common ex-spouse example to other situations as well: jointly owned real estate, living trusts, testamentary trusts, estate tax planning, payable on death, transfer on death, etc.

The prudent way to cure these unintentional results is to check the beneficiary designations on your accounts and insurance policies. Checking beneficiary designations is an ongoing process. When a new account is opened or a new insurance policy is purchased, it is recommended that you contact your attorney at JBN to discuss how to best title the account and list the beneficiary designations.



Employee Classification Act

Effective January 1, 2008, Illinois adopted the Employee Classification Act. The Act, which mostly applies to the construction industry, states that all workers, even those previously considered to be independent contractors, are presumed to be employees and subject to withholding laws. In order to be classified as an independent contractor, the Act provides a list of factors. This Act is the State of Illinois' attempt to prevent workers from being treated as independent contractors even though they are employees. Many construction companies will now be forced to change the way they treat their workers.

One method of helping construction companies treat true independent contractors as such under the limitations of the new Act is to have an "Independent Contractor Agreement". This agreement spells out, in writing, the terms and conditions of a worker's duties to the construction company. Although an independent contractor agreement is never conclusive (i.e. guaranteed), it can be good evidence if ever faced with an audit.

JBN is experienced in drafting these agreements as well as counseling businesses on employment matters.

Radon Awareness Act

Effective January 1, 2008, Illinois adopted the Radon Awareness Act. Radon is a colorless, odorless gas that is mostly the result of the natural breakdown of uranium in the soil. Radon is the leading cause of lung cancer among non-smokers. Many times, radon enters a home through the basement.

The Act, which applies to most residential real estate transactions (there are some exceptions), provides that a seller must, before the buyer accepts an offer to purchase real estate, complete a disclosure form and provide to the buyer a pamphlet regarding the hazards of radon.

The disclosure form is similar to the lead-based paint disclosure (which is the result of a federal law) in that the seller must disclose the existence of any known radon in the home.

This new Act is another in a line of disclosures that a seller must be aware of and only highlights the fact that if you're buying or selling real estate, whether commercial, agricultural, or residential, you should contact an attorney at JBN to assist you through the process.

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