

LAW OFFICE OF STEPHANIE L. SCHNEIDER, P.A.

CERTIFIED ELDER LAW ATTORNEY BY THE FLORIDA BAR

1860 N. PINE ISLAND ROAD, SUITE 111

PLANTATION, FLORIDA 33322

TELEPHONE (954) 382-1997

FACSIMILE (954) 382-9997



PROPER PLANNING MAY CREATE PEACE OF MIND



Feb. 2003

The Importance of Estate Planning

When representing a terminally ill or, severely injured plaintiff it is important to suggest that the individual consider having an estate plan created immediately. A properly executed estate plan ensures that the individual's desires about the distribution and recipients of his/her property is enforceable at death. When a Florida resident dies without an estate plan, the laws of intestacy will create an estate plan including designating a Personal Representative, beneficiaries and the amounts they receive. Intestacy may not be what the decedent desired.

When the client meets with an estate planning attorney it is also important to review the beneficiary designations for non-probate assets and make sure that the documents state exactly what the client intends. Picture this scenario: Plaintiff divorces his/her spouse. Prior to being killed or dying the client forgets to change the beneficiary designation forms for a pension plan and a group term life insurance policy offered through the employer. The former spouse is designated as the beneficiary for both plans. Do the beneficiary designations govern the result or, does the Uniform Probate Code in the

state of the decedent's domicile?

The answer is found in the case of *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). The Court ruled that ERISA (Employee Retirement Income Security Act of 1974) pre-empted the Uniform Probate Code in the state of Washington. Washington's Uniform Probate Code states that when a marriage is ended any designation on a non-probate asset in favor of the former spouse is revoked. However, the Court held that administrators of ERISA plans need to have uniformity and they should be able to rely on what the beneficiary designations say rather than have to know the laws of all the states. The result in the case gave the two assets to the former spouse who in the divorce proceeding had been awarded her half community property interest, a business and

an IRA account. The decedent's children received no benefit from the pension plan or the life insurance policy.

Florida Statute 732.507 provides that a provision in a will that affects the spouse becomes void upon the divorce of that person or dissolution of the marriage.

The lesson here is that when there are changes in a client's

life circumstances, such as divorce, the necessary beneficiary changes should be made on non-probate assets especially those governed by ERISA. The change must be in writing, signed, dated, and received by the company in order to be effective.

Meet The Staff

Kathy Russo - CLA

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home Resident Rights
- Estate Planning

Karen Verna - CLA

- Guardianship
- Probate
- Trust Administration
- Court Appointments

Myrna Hambro-Secretary

Danielle Galvin-Office

Assistant

“ When there are changes in a client's life circumstances, such as divorce, the necessary beneficiary changes should be made on non-probate assets especially those governed by ERISA.”