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Expert Guidance and Creative Solutions for Retirement Professionals

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Things You Might Not Know About Your Retirement Plan

PARTICIPANT LOANS	CHEAP TECH TOOLS	DEATH & DIVORCE	FIDUCIARY FACT OR FICTION	COMPENSATION	GOVERNMENT AUDITS	INVESTMENT ADVISOR MODELS	MARKETING'S FIDUCIARY RESPONSIBILITY
\$	\$	\$	\$	\$	\$	\$	\$
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Family Feuding About Benefits

By Adam C. Pozek, ERPA, QPA, QPFC

*Thousands of plan sponsors surveyed ... the top 2 answers are on the board.
Name two sensitive subjects you prefer to avoid getting stuck in the middle of with your employees.*

DEATH OF A FAMILY MEMBER	5
GETTING A DIVORCE	6
3	7
4	8

Both correct! And, unfortunately, both are likely to come up at some point in the life of a qualified retirement plan, often at the same time. We read about the rules that are designed to protect participants, but those rules also extend to beneficiaries, spouses and former spouses. As much as we would probably all prefer to stay out of those discussions, understanding the basics can help you cool down potentially heated conversations.

Death and Taxes

As the saying goes, both are inevitable. In this case, the death of a participant could potentially lead to taxes depending on who the beneficiary is and what he or she elects to do with the inherited account. All of those tax ramifications could fill volumes, so we won't go down that rabbit hole here. Instead, let's focus on determining who the correct beneficiary is.

You may be thinking, "What is there to discuss? You look at the beneficiary designation form and pay the benefits to the person listed." If you actually have those designations on file, it might be that easy, but things don't always work out that way. In fact, there are cases on this issue litigated every year, some even going as far as the U.S. Supreme Court.

Perhaps an easy place to start is with some documents that are not relevant to determining the correct beneficiary. It often comes as a surprise that many estate planning documents such as wills and prenuptial agreements are disregarded in determining who is entitled to the retirement plan accounts of a deceased plan participant. Without getting into the gory details, the gist is that those documents are governed by state law and deal with the disposition of an individual's estate and non-plan assets. Company sponsored retirement plans are governed by federal law and follow their own set of rules. So, if a family member, attorney or some other party comes to you with a will or pre-nup, claiming it entitles someone to your former employee's retirement benefits, the situation most definitely calls for further research.

Turning our attention to what is relevant, a properly completed beneficiary designation form is first and foremost. But what is proper? For starters, the form should clearly identify the participant and plan as well as the person or persons who are the intended beneficiaries. These could be specific names - 100% to Richard Lawson - or may be more general - all of my children in equal shares. Both

would be acceptable; however, something as general as “all of my family members” probably wouldn’t. In general, the more specific a participant is on the form, the more likely it is the account will find its way to the intended recipient(s) and the easier it is for you to figure that out. Another critical piece of information is the participant’s signature and date. Since participants can change beneficiaries as often as they want, having that date is necessary to know which designation is the most current and should be honored.

DID YOU KNOW?

With recent court rulings recognizing same-gender marriages, participants who might not have been considered legally married in the past, now are. Since not all those in LGBT relationships are comfortable making it known, it is increasingly important for plan sponsors to be aware of these rules and seek appropriate means to obtain this information.

The Newlywed Game and Beyond

The retirement plan rules specify that for a married participant, the default beneficiary is his or her spouse. It is possible to name someone else; however, the spouse must sign-off (with a notary) on the change. With recent court rulings recognizing same-gender marriages, participants who might not have been considered legally married in the past, now are. Since not all those in LGBT relationships

are comfortable making it known, it is increasingly important for plan sponsors to be aware of these rules and seek appropriate means to obtain this information.

Another impact of the spousal default is that a participant’s subsequent marriage trumps any previous beneficiary designations even if the new spouse was involved in the previous decision. The reason is that the spouse was not a spouse at the time he or she agreed to it, so it doesn’t qualify as spousal consent. In that case, the simple solution is to have the participant complete a new designation form and have the new spouse consent.

Back To The Dating Game

Just because a spouse is the default beneficiary doesn’t mean it evaporates when a marriage ends. Although some plan documents now include language automatically revoking a spousal designation upon divorce, it is not the case across the board. As a result, it is highly recommended that participants complete new designations if they go through a divorce. With emotions running high, you might not want to get in the middle of it; but doing so now can prevent monumental headaches down the road if a former spouse makes a claim. And it happens ... we see cases every year when a participant gave half of his or her account via Qualified Domestic Relations Order to a former spouse at the time of divorce, forgot to change a beneficiary designation and ended up giving the rest of the account to the ex-spouse on death, much to the chagrin of the rest of the family. Just imagine how dicey it could get in the case of multiple marriages and divorces.

One Strike And You’re Out

This is a pretty big deal because paying benefits to the wrong person often results in the company

Family Feuding About Benefits ... continued

having to come up with the funds to pay the correct person. Yikes!

So what happens if there is no designation on file? The first place to look is the plan document. Most list a default order to be used, and it usually looks something like this:

- Spouse (if married); then
- Children in equal shares; then
- Parents in equal share; then
- The participant's estate.

If you are still in doubt (or even if you just want confirmation), it is a good idea to seek professional help. Contact your consultant at DWC or maybe your attorney. If there is still nothing definitive, it may be possible to file what is called an interpleader action with the court to get a judge to make the final determination. Even if it is later found to be incorrect, the company and the plan are insulated for having gone through that formal process.

Conclusion

All of this leads to one central recommendation ... if you don't have current beneficiary designations on file and where you can readily access them, consider updating your files. Some go so far as to send employees a memo every year reminding them to update their designation if they've had a change in their lives, which may include marriage, birth of a child or divorce. That can also be a great time to remind employees of the impact of changes regarding same-gender marriage in a non-threatening way and without singling out anyone.

Having tight internal controls around this process can bring cooler heads to an emotionally heated situation and hopefully keep family feuds out of your office.

Additional Reading

Automatically Revoking Beneficiary Designations on Legal Separation Can Lead to Plan Errors

<http://www.irs.gov/Retirement-Plans/Automatically-Revoking-Beneficiary-Designations-on-Legal-Separation-Can-Lead-to-Plan-Errors>

Adam is a nationally known writer and speaker and 20+ year veteran of the pension consulting business. He is a partner at DWC ERISA Consultants, where he works with businesses of all sizes and industries from across the country. He serves on ASPPA's Leadership Council and is co-editor-in-chief of the Journal of Pension Benefits.

