



Checklist of Family Law Obligations and Life Insurance

This publication provides general information about the issues that may arise when dealing with a separation or divorce and how it impacts the administration and distribution of a life insurance policy.

This publication is for advisor's use only and is not to be shared or distributed to clients. Clients should seek independent tax and legal advice on all family law matters.

Note: Some information contained in this publication may not apply in Quebec. Independent legal advice should be obtained if a client resides in Quebec.

Introduction

Family law situations are never easy. You, as an Insurance Advisor may become involved in discussions with clients to help them make decisions about their life insurance obligations when a separation or divorce occurs. This may mean changing a beneficiary designation or altering ownership structures of a life insurance policy to comply with a separation agreement, court order or divorce judgment.

General discussion (a glossary of terms is included with this guide)

When clients are negotiating a separation agreement, court order or divorce judgment or litigating their family law matter, there are some issues that you may wish to bring to their attention to assist them in discussions with their lawyer about life insurance policies, such as:

Irrevocable Beneficiary discussions:

- Does an ex-partner/spouse named as irrevocable beneficiary make the most sense?
 - An irrevocable beneficiary will remain on the policy until consent is obtained to be removed.
- Does separation agreement/court order contemplate consent and execution of all documentation to remove the irrevocable beneficiary designation at a future time/date?
- What if the irrevocable beneficiary becomes incapacitated?
 - Are all parties prepared to deal with an attorney acting under a power of attorney or guardian for the incapacitated person?
 - Attorneys acting under a power of attorney cannot make beneficiary designation changes. Some provinces may allow exceptions in limited circumstances.
- The ex-partner/spouse will have to consent to policy transactions (i.e. transfer of ownership, alter or revoke a beneficiary designation, assign policy, withdrawal of funds, change policy coverage).

Examples of items that can still be done by a policy owner where consent of the irrevocable beneficiary is **not** needed:

- Increasing the Face Amount (includes Death Benefit)
- adding riders/benefits
- age changes which result in an increase to the face amount
- smoker to non-smoker
- changing to fully paid-up if there is a contractual option
- withdrawal of accumulated dividends
- dividend option changes
- adding a trustee to a beneficiary designation

Life Insurance proceeds discussions:

- What is supposed to happen to life insurance proceeds at death?
 - Separation agreement should clearly address what happens to insurance proceeds at death e.g. proceeds shall satisfy outstanding support obligation to the extent of the obligation only (avoids scenario where ex-spouse/partner would receive full proceeds). Beneficiary designation (including declining balances) must be drafted carefully and in accordance with separation agreements or court orders.
Note: Manulife cannot administer designations that impose a responsibility upon Manulife to decide whether an event has occurred to justify a declining balance.
- What will happen with any excess life insurance proceeds?
 - The beneficiary designation should clearly state the identity of the person(s) who should receive the excess balance.
 - The beneficiary designation must reflect the provisions of the separation agreement or court order.

Support Obligation discussions:

- Are support payments secured by life insurance proceeds or has the policy been pledged for support obligations?
 - Consider whether the separation agreement or court order addresses support obligations.
 - Does it indicate that your client must designate the ex-spouse/partner?
- Should an ex-spouse/partner who does not own the policy pay for the insurance premiums?
 - While this will prevent a lapse of the policy the premium payer ex-spouse/partner will not receive information about the policy.

In the event of a separation or divorce, clients should always seek proper legal advice before making any changes to the ownership or to a beneficiary designation on a life insurance policy to ensure that they fully understand the impact the change may have on their overall estate plan and they are complying with all relevant court orders and agreements. Manulife is not a party to a separation agreement, court order or divorce judgment. It is the responsibility of the parties to a separation agreement, court order or divorce judgment to abide by the terms and conditions contained within these family law documents.

Glossary

This glossary of terms is here to assist you to better understand the terminology used in this guide. In the pages that follow you will see bolded words (once) which correspond with the words found in this glossary.

Beneficiary - Irrevocable

An irrevocable beneficiary designation cannot be altered or revoked while the irrevocable beneficiary is living without that beneficiary's consent. When the insured person dies, the insurance proceeds will be paid directly to the irrevocable beneficiary. An irrevocable beneficiary designation is not effective unless it is filed with the insurance company during the insured person's lifetime.

Beneficiary - Revocable

A revocable beneficiary can be changed by the owner of the life insurance policy without the consent of the beneficiary.

Court order

A court order is issued by a court. It may be what finalizes the outcome of the family law matter or may reflect an interim arrangement.

Dependant relief claim

Where a deceased has provided support or is under a legal obligation to provide support for another person, they must make adequate provision for the support of a dependant and where this has not occurred, a dependant can make a claim against the estate of the deceased. The onus is on the dependant to successfully argue they are a dependant. A person receiving support under a court order is a dependant.

Divorce judgment (Divorce order)

A Divorce Judgment or a Divorce Order, as it is called in some provinces, is an order from the Court that says that two people are divorced from each other. The divorce judgment may grant a divorce, or it may also set out terms that relate to other family law issues such as child or spousal support. A separation agreement may be the basis for what the couple relies upon where the divorce judgment only indicates that the divorce is granted. Not all couples obtain a divorce judgment. They may only have a separation agreement. A person cannot remarry without a divorce judgment.

Insurance trust

A testamentary trust that is funded with the proceeds of an insurance policy payable on the death of the life insured. It is a vehicle that can be used to receive insurance proceeds to meet support obligations.

Note: Insurance trusts may not apply in the province of Quebec. Proper advice should be obtained from a legal professional in Quebec regarding the use and application of an insurance trust.

Lapse

A life insurance policy will lapse when a premium payment is missed and the cash surrender value, if any, is insufficient to pay the missed premium. When a policy lapses, there is no insurance protection and a death benefit will not be paid.

Separation agreement

A domestic contract that creates certain legal rights between two individuals upon their separation/relationship breakdown. It can apply to couples that have married or cohabitated. Provincial legislation permits couples to enter into such arrangements and to address issues outside of what is contained in the provincial family law legislation or to agree to what is permissible under provincial family law in a way that suits their situation e.g. property division or equalization. Where a couple has been married, the separation agreement may survive the divorce. In other words, the terms of the separation agreement will govern how the couple will deal with their separation. Couples who have been married do not have to obtain a divorce judgment. The only document the separated couples may have in this instance is the separation agreement. Similarly, a couple may not have a separation agreement.

Variation

A variation of a court order, divorce judgment may be granted by the court after an application is made to vary it. Varying a separation agreement means the parties enter into an amendment to their agreement and both consent to and sign the amendment or variation.

This guide applies to married couples and those living together. A life insurance policy is an asset of the relationship and may be subject to property equalization or division where the parties are married. It may also apply to common law partner/spouses in provinces that permit an equal share in the value of family property. In provinces where, common law partner/spouses do not have a right to make a property claim under provincial legislation, arguments may be made for unjust enrichment or constructive trust. Your clients should be directed to seek legal advice on all family law matters to better understand their rights relating to property and support.

Beneficiary Designations:

Situation	Considerations	Solutions
<p>Beneficiary Change:</p> <p>Your client has a life insurance policy. The beneficiary designation is addressed in a separation agreement or divorce judgment. The client wishes to change the beneficiary designation to a new partner contrary to the separation agreement or court order.</p>	<ul style="list-style-type: none"> • Will the new beneficiary designation cause your client to breach the terms of his or her separation agreement or court order? • Is there an amendment to the separation agreement or has the original court order been varied by a judge in a way that confirms your client’s ability to make a new beneficiary designation? • Does your client have a court ordered obligation, or, did he or she agree (in a separation agreement) to inform his or her ex-spouse/partner about any changes to the policy prior to the change being made? • Does the ex-spouse/partner have to agree to the change? If yes, has the communication about the change or consent been documented by your client? • Is your client aware of potential dependant relief claims if the change is made? 	<ul style="list-style-type: none"> • Direct your client to seek proper legal advice if they want to make a change to the beneficiary designation to avoid breaching the separation agreement or court order. <p><i>Warning – if there is a relevant court order, your client could be found in contempt of the court order if he or she does not comply with its terms.</i></p> <p>If the court order has been varied, or, if the separation agreement has been amended, ask your client to provide a copy of the new agreement or court order. You can keep a copy on file and you can provide it to the insurance company at the time the change is requested. In some cases, the insurance company may require a full copy of the new agreement or court order.</p> <ul style="list-style-type: none"> • Ask your client if the changes have been communicated in writing to the ex-spouse/partner. All documentation of this communication should be retained by the client. • Ensure that your client is aware of and understands the potential consequences associated with changing the beneficiary designation. Document this conversation in your file.

Situation	Considerations	Solutions
<p>Notice of Lapse:</p> <p>Your client's ex-spouse/partner is named as an irrevocable beneficiary but there is concern that the policy may lapse.</p> <p>How can the irrevocable beneficiary get notice of a lapse?</p>	<ul style="list-style-type: none"> • Naming an irrevocable beneficiary does not mean that the irrevocable beneficiary will receive notice of a policy lapse. • If an ex-spouse/partner makes premium payments to prevent the lapse they will not be entitled to policy information about the policy unless the policy owner discloses it to them or written consent is provided by the policy owner to the insurance company. 	<ul style="list-style-type: none"> • Naming your client's ex-spouse/partner as an irrevocable beneficiary restricts certain changes to the policy. e.g.: beneficiary designation etc. • A collateral assignment in favour of an ex-spouse/partner alone may generate notice of a lapse but depends upon the insurance company's systems for lapse notice. <p><i>Note: A collateral assignment is only a solution where there is a debt obligation from the owner to the ex-spouse/partner and the insurance company provides notice of the lapse. where the policy is collaterally assigned.</i></p> <ul style="list-style-type: none"> • Naming an irrevocable beneficiary and a collateral assignee may generate a policy lapse notice and restricts policy changes without their consent.
<p>Minor Irrevocable Beneficiary:</p> <p>A minor child(ren) is named as an irrevocable beneficiary (ies) as security for a child support obligation</p>	<ul style="list-style-type: none"> • Your client, as owner of the policy, will not be able to make certain policy changes because minor children who are irrevocable beneficiaries cannot provide consent. • A minor child cannot receive insurance proceeds directly when insured dies. • Insurance proceeds will be paid into court for management until the child reaches the age of majority (applicable by province). 	<ul style="list-style-type: none"> • With respect to policy changes, can only be administered by court order or where a separation agreement addresses how this issue can be dealt with and the parties have provided the appropriate direction/consent to the insurance company. • With respect to receipt of insurance proceeds, create an insurance trust. • Name a trustee – trustee may be ex-spouse/partner or third party. <p><i>Note: Trustees of an insurance trust cannot be designated as "irrevocable". The trust is not effective until the death of the life insured, and the trustee cannot consent to policy transactions during the lifetime of the life insured.</i></p>
<p>Trustee:</p> <p>Your client's ex-spouse/partner is named trustee for insurance proceeds. What other options exist?</p>	<ul style="list-style-type: none"> • Is your client's ex-spouse/partner the right person to ensure proceeds are directed to children? • Would a third party be more appropriate? • Can your client and ex-spouse/partner agree on a third party? 	<ul style="list-style-type: none"> • Create an insurance trust which carefully describes the trustee's powers and terms of distribution. The question is who will be the trustee? - perhaps a third party.

Situation	Considerations	Solutions
<p>Decreasing support amount:</p> <p>Your client's child or spousal support obligation will reduce over time. Accordingly, your client wishes to ensure that the security for the support obligation also reduces over time.</p> <p>How can this declining obligation be reflected in the beneficiary designation?</p>	<ul style="list-style-type: none"> • The reduction in the amount of the insurance proceeds that are needed to secure the support obligation must accurately and completely reflect the terms of a separation agreement or court order. If not, your client could be breaching the separation agreement or court order. • If the insurance company cannot administer the beneficiary designation (reduction in balance of insurance proceeds payable), the insurance proceeds will be paid into court when a claim is made. 	<ul style="list-style-type: none"> • A reduction in the insurance proceeds necessary to secure a support obligation may be administered. However, the following requirements should be met (this may not be a complete list of requirements – each case may vary depending on its unique facts): <ul style="list-style-type: none"> – Provide a full copy of the separation agreement or court order to the insurance company. – Your client, with the aid of a lawyer, should create a “Declining Beneficial Interest Agreement” which can be signed by both parties and filed with the insurance company. – The circumstances which cause a reduction in the insurance proceeds payable, must be clearly defined and must be able to be administered by the insurance company. The insurance company will not adjudicate or referee any disputes about whether a certain condition or event that must exist before a reduction can occur has happened.
<p>Quebec beneficiary designations</p>	<ul style="list-style-type: none"> • A divorce or nullity of a marriage or the dissolution or nullity of a civil union causes any designation of the spouse as a beneficiary to lapse. • Failure to designate the ex-spouse after a divorce judgment will cause adverse claims when the life insured dies and could result in your client being in breach of a divorce order. 	<ul style="list-style-type: none"> • Policy owners must sign a new beneficiary designation re-designating their ex-spouse or civil union partner if the divorce judgment states that the ex-spouse remains a beneficiary.

Ownership:

Situation	Considerations	Solutions
<p>Sole Owner:</p> <p>The policy is owned by one spouse but both spouses want to leave the insurance proceeds to benefit their children.</p>	<ul style="list-style-type: none">• Intention is for children of the relationship to benefit from the life insurance proceeds.• The situation can be handled more easily if all the children are adults at time of separation. If there are minor children, additional planning will be required.	<ul style="list-style-type: none">• How are the insurance proceeds to be paid? Provisions in a separation agreement or a court order should address this issue.• Consider designating adult child(ren) as irrevocable beneficiary(ies).• If child(ren) is a minor, name ex-spouse/partner as irrevocable beneficiary up to the point where children turn age of majority – then ensure that separation agreement or divorce order requires ex-spouse/partner to consent to revocation of his or her designation when child(ren) reach age of majority.
<p>Multi Owner:</p> <p>A multi-life insurance policy is purchased during your client's marriage and the policy is jointly owned.</p>	<ul style="list-style-type: none">• The policy may be an asset subject to division and equalization.• A policy's value may include cash surrender value or fair market value for division or equalization purposes.• The legal and tax treatment of the policy will vary by province.• Your client and his or her ex-spouse/partner will have to both agree to all future policy changes. <p><i>Note: Some policies require the consent of the life insured before a conversion will be granted.</i></p>	<ul style="list-style-type: none">• Review the policy contract. It may include a contractual right to split the policy.• The contract may indicate how the split will be administered.• A policy split may have tax consequences. You, as the advisor, and the client, should be aware of and understand the tax consequences before a policy split is requested.• The policy owners may wish to cancel the policy and seek 2 new individually owned policies. <p><i>Warning – the parties should not cancel their existing policy until or unless they know whether an insurance company will issue a new policy in case one or both parties are no longer insurable.</i></p> <ul style="list-style-type: none">• If the parties cannot or do not wish to cancel or split the policy, your client should negotiate a provision in a separation agreement or court order that describes how future policy changes will be decided. Your client's lawyer can assist.

Situation	Considerations	Solutions
<p>Joint last to die:</p> <p>A joint-last-to-die policy is purchased during the marriage and it is jointly owned.</p>	<ul style="list-style-type: none"> Your client may want to retain coverage to benefit kids from a first marriage. 	<ul style="list-style-type: none"> Policy change to single life may be possible if permissible in the contract, this policy change should be reflected in the separation agreement or in a court order. The policy owners may wish to cancel the policy and seek 2 new individually owned policies. <p><i>Warning – the parties should not cancel their existing policy until or unless they know whether an insurance company will issue a new policy in case one or both parties are no longer insurable.</i></p> <ul style="list-style-type: none"> Your client and his or her ex-spouse/partner may consider transferring ownership of the policy to an adult child(ren). <p>Caution – consider consequences if adult child(ren) dies before the lives insured (successor owner designation advisable).</p> <ul style="list-style-type: none"> A change in ownership may result in a tax gain to your client. You, as the advisor, and the client, should be aware of and understand the tax consequences before a change in ownership is requested. Consider what happens to the policy if it is transferred to an adult child and that child experiences a marital breakdown.
<p>Adding an Owner:</p> <p>Should an ex-spouse/partner be added as a joint owner of a policy?</p>	<ul style="list-style-type: none"> The ex-spouse/partner is entitled to all policy information. As a joint owner, the ex-spouse/partner will have to approve all policy transactions and changes, withdrawals, loans, investment changes, beneficiary changes. 	<ul style="list-style-type: none"> Your client can remain as the sole owner and he or she can negotiate a provision in a separation agreement or court order that requires your client to keep the policy in good standing (i.e. premiums paid in full when due) and <ol style="list-style-type: none"> your client will have an obligation to provide yearly disclosure to the ex-spouse/partner, or your client can provide Irrevocable Direction to the insurance company to disclose all information to the ex-spouse/partner if he or she requests it. <p><i>Note: Manulife does not have the systems capability to administer any agreement or court order that requires Manulife to provide yearly disclosure to the ex-spouse/partner.</i></p>

Situation	Considerations	Solutions
<p>Conversion: Your client wishes to convert his or her Term policy or Term rider and</p> <p>(a) the policy is jointly owned, or</p> <p>(b) the ex-spouse/partner is the life insured.</p>	<ul style="list-style-type: none"> If the policy is jointly owned, all owners must approve the conversion request. <p><i>Note: some policies require the consent of the life insured before a conversion will be granted.</i></p> <ul style="list-style-type: none"> If consent is not required, some provinces allow a life insured to seek a court order terminating the life insurance policy. 	<ul style="list-style-type: none"> If the policy is jointly owned, all policy owners must consent and sign the request to convert. If your client's ex-spouse/partner is the life insured, review the contract to determine if the life insured's consent is required. If yes, your client should seek the ex-spouse/partner's consent and the consent requirement should be addressed in the separation agreement.

Cross Reference Materials:

[An advisor's guide to beneficiary designation](#)

[An advisor's guide to insurance trusts](#)

[Effective Planning with Insurance Trusts](#)

Tax Topic: [Life Insurance and support obligations](#)

Tax Topic: [Life Insurance and property issues on marriage breakdown](#)

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