

July, 2004

To Our Clients and Friends:

Most of us have more than enough to do. We're on the go from early in the morning until well into the evening—six or seven days a week. Thus, it's no surprise that we may let some important things slide. We know we need to get to them, but it seems like they can just as easily wait until tomorrow or the next day or . . . whenever.

A recent court decision reminds us that sometimes "whenever" never gets here. The case involved the beneficiaries of a \$1 million employer-sponsored life insurance policy and someone who thought she was the beneficiary. The insured was a man named Clint who died unexpectedly after an all-terrain vehicle fell on him. About 12 years prior to his death, Clint had named his second wife, Barbara, the sole beneficiary. A few years later, when he and Barbara divorced (and as part of the divorce agreement), he agreed to maintain the policy for the benefit of her and their kids. However, before his death he had remarried and, in his newly updated will, he named his third wife, Mary Beth, as a 25% beneficiary of the policy with his and Barbara's children and the children of his first marriage as beneficiaries of the remaining 75% in equal shares. Clint never got around to giving his employer a new beneficiary form for the life insurance policy.

When Barbara, Mary Beth, and the kids all claimed a share of the \$1 million death benefits, the courts ultimately had to decide who was entitled to what. Amazingly, even though Barbara was named as the sole beneficiary, the court ruled she wasn't entitled to anything. The key to the court's decision was that the employer's plan allowed beneficiary designation changes to be made by will and the will was signed more recently than the last policy beneficiary designation form. Thus, the beneficiary designations in Clint's will controlled.

The outcome of this case was largely controlled by its unique facts. In the end, Clint's wishes prevailed. However, it took a lot of effort and expense to get there. Also, if the facts had been slightly different (such as the plan requiring the use of specific beneficiary forms), the outcome could have been quite different. This leads us to a couple of important take away points.

The first is that if you want to change the beneficiary for a life insurance policy, retirement plan, IRA, or other benefit, use the plan's official beneficiary form rather than depending on an indirect method such as a will. The second point is that it's important to keep your beneficiary designations up-to-date. Whether it is because of divorce or some other life changing event, beneficiary designations made years ago can easily become out of date.

One final thought regarding beneficiary designations—while you're verifying that all of your beneficiary designations are current, make sure you've also designated secondary beneficiaries where appropriate. This is especially important with assets such as IRAs, where naming both a primary and secondary beneficiary can potentially allow payouts from the account to be stretched out over a longer period and maximize the time available for the tax deferral benefits to accrue.

If you have any questions about what we've discussed in this letter, please contact us.

Very Truly Yours,

Krebs & Co., CPA's, Inc.
dba **Krebs Advisory Group**