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Pennsylvania Legal Update

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Life Insurance, Beneficiaries, and Divorce

What happens if you don't remove your ex-spouse from your life insurance policy following divorce? You may be surprised to learn that how you got the life insurance policy makes an enormous difference.

Pennsylvania estate law provides that divorce automatically nullifies the designation of an ex-spouse as the beneficiary of a life insurance policy.

Pennsylvania estate law provides that divorce automatically nullifies the designation of an ex-spouse as the beneficiary of a life insurance policy. Only if the parties' settlement agreement or a court order clearly provides that the ex-spouse shall continue as the beneficiary can an ex-spouse remain entitled to a life insurance benefits designation signed before the divorce. Thus, when a divorce is finalized without any agreement or court order that directs existing life insurance to an ex-spouse, Pennsylvania estate law mandates

that each ex-spouse forfeits all claims to collect existing life insurance left by the other spouse.

In a recent case, a collision of this Pennsylvania estate law and federal law regulating employment benefits produced a surprising result. In the case, a man had named

his wife as the primary beneficiary of a \$40,000 life insurance policy provided to him by his employer. He named his nephew as the contingent beneficiary—the person who would be paid the \$40,000 if

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Restitution for Victims of Crime

A man who was found guilty of aggravated assault appealed when the trial judge ordered him to go to jail for 10 years and to pay the victim restitution, including \$2,800 in lost wages. The man was convicted, after jury trial, of aggravated assault for hitting the victim with an electric guitar, causing the victim to suffer a broken wrist, a broken eye socket, and facial numbness.

The victim was an independent contractor who regularly worked for Amtrak. At the sentencing hearing, the victim produced extensive documentation of his income from Amtrak. The \$2,800 lost wages accrued over the two-month period of the victim's recovery. The appeal court upheld the trial judge's order of res-

titution to the victim for lost wages.

Pennsylvania law requires that sentencing judges include "full restitution" in their sentencing orders, "regardless of the current financial resources of the defendant." The goal of restitution is to "provide the victim with the fullest compensation for the loss." The Pennsylvania statute does not permit reduction of a restitution award if the victim receives insurance coverage or government benefits that pay some of his or her losses. If such payments are made, the convicted criminal must then reimburse the insurance company or the government agency.

Pennsylvania operates a Crime

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Employee or Independent Contractor?

A Pennsylvania business that installs exterior insulation on commercial buildings recently was required to pay over \$35,000 in unemployment contributions, penalties, and interest after it paid its employees as independent contractors for three years. The Department of Labor challenged the independent contractor status, won the

When an employer sets the time, the place, and the manner of job performance, the court concluded, the worker will almost always be considered at law to be an employee.

challenge, and was then entitled to the back payments for unemployment contributions the employer owed for the previous three years.

All businesses that employ workers must contribute to the state unemployment fund, must pay workers' compensation insurance, and must comply with federal and state wage-withholding and Social Security regulations. But when a business hires an independent contractor, the business simply pays the independent contractor directly, and the business has no obligations for unemployment, workers' compensation, or wage tax withholding.

In the case of the insulation installation company, it placed numerous workers at various job sites where the company had contracts to install insulation. The company provided no clothing, tools, or pro-

TECTIVE gear for the workers; they had to supply their own. The company did supply some equipment, including scaffolding, and supplied all the materials needed to complete the work.

The company paid each worker per square foot of insulation the worker installed. The amount paid to each worker per square foot varied at each job site; the company kept a portion of the contract price at each site and then divided the remainder of the contract price

among all the workers based on the square footage installed by each worker. The size of each project was the main factor in how many workers were sent to each site. The company required each worker to sign an independent contractor agreement for each project. When workers worked at multiple projects, they signed one agreement for each site.

In finding that the workers were employees and not independent

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If It's Not Dangerous, It May Not Be a Nuisance

Many Pennsylvania municipalities have enacted ordinances that ban property owners from permitting "nuisances" to exist on their property. A typical nuisance ordinance defines nuisances as conditions that could damage, inconvenience, or annoy the owner's neighbors.

Nuisance ordinances often forbid property owners to keep abandoned or junked vehicles on their property. The ordinances can require the cleanup and removal of junk, debris, trash, and burned buildings. Municipalities sometimes define abandoned or junked vehicles to include any vehicle that is not registered and insured.

In a recent case, a borough ordered several homeowners to remove unregistered, uninspected, and uninsured vehicles from their residential properties. The home-

owners refused. On appeal to the commonwealth court, the homeowners won.

The commonwealth court noted that the borough and the homeowners agreed that the properties were well maintained, regularly mowed, and neat. But one homeowner had five junk vehicles on his residential property; the other had 15 vehicles on his residential property. The borough insisted that the presence of the vehicles constituted a public nuisance.

The borough conceded that the homeowners had hired an inspector who issued a report that both properties were free of "vermin and noxious pests." In addition, a certified mechanic hired by the homeowners had inspected the vehicles and issued a report that none was

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Employee?

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contractors, the court noted that the agreement required that the workers "may not leave the job site without permission" from the company. The agreement also set work hours commencing at 8 a.m. and concluding at 5 p.m. and prohibited the workers from giving their name or information about their services to any other business while working for the company.

The owner testified that workers were free to come and go, setting their own hours, but the court found that the agreement had been enforced and the actual practice was that employees worked a schedule set by the company.

The court noted that Pennsylvania labor law presumes that all workers are employees. A company that claims its workers are independent contractors has the burden to prove that status. The "key element" is whether the employer has the right to control the work to be done and the manner in which it is performed. Other important factors are the terms of any contract between the parties, the nature of the worker's skill or occupation, whether payment is by the hour or by the job, and whether the worker can or does work for other companies or individuals.

The court emphasized that a worker's status is unique to each case and is based on the actual history of how the work was controlled and by whom. When an employer sets the time, the place, and

the manner of job performance, the court concluded, the worker will almost always be considered at law to be an employee. In the case involving the insulation installation company, the court found "persuasive" the fact that the workers did not set their own rates of pay, nor were they guaranteed any amount of pay. Instead, their compensation varied depending on how many workers the company used at each job site and how much the com-

pany was paid in gross contract payment.

The law relating to independent contractors is complex. Companies and individuals who treat workers as independent contractors are best protected when the independent contractor is engaged in a distinct occupation or business, provides regular services to other individuals or companies, and has broad control of the time and manner of the work provided.

Nuisance

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leaking any substances or otherwise creating any environmental hazards. The borough also conceded that it had no proof of any actual danger caused by the vehicles. But because the vehicles were unregistered and uninsured, the borough insisted that they were nuisance vehicles and had to be removed.

The commonwealth court found that Pennsylvania law on nuisances has long required that municipal ordinances may not declare conditions to be automatic nuisances. Instead, all municipalities must prove actual danger, public harm, or health risks arising from claimed nuisances.

Ordinances can define nuisance vehicles as any vehicles that are not registered and insured. But in order

to demand that a homeowner remove such vehicles from his or her property, municipalities must prove that an actual nuisance exists. Where the abandoned vehicles include broken parts, harbor animals, or have attracted children, the municipality may be entitled to demand removal. Likewise, outdoor junk, debris, or burned-out structures are subject to local municipal enforcement if they cause actual dangers.

If you are concerned about a neighbor's property that is unsightly, you won't succeed in enforcing local nuisance ordinances unless you can prove the existence of an actual nuisance. If you keep abandoned vehicles or a large collection of personal property outdoors on your property, or if you have dilapidated buildings on your property, you are obliged to prevent the development of dangerous conditions.

Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Life Insurance

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the wife were deceased or otherwise legally barred from receiving the money.

The man and his wife/beneficiary divorced and the man died three months after the issuance of the final decree of divorce. Despite the divorce, the man had not removed his ex-wife as the primary beneficiary on the life insurance policy.

Following his death, the man's estate executor petitioned the court to permit the estate to pay the life insurance to the nephew, noting that upon the divorce the designation of the ex-wife was null. But the ex-wife disputed the application of Pennsylvania estate law, because employee benefit plans are strictly regulated by federal law only. Federal law requires that benefit payments be made based on the plan documents, in this case the original beneficiary designation form that still named the ex-wife as the primary beneficiary.

The dispute was litigated all the way to the Pennsylvania Supreme Court, and the ex-wife won. The Supreme Court reviewed the federal law and concluded that Congress passed the federal Employee Retirement Income Security Act (ERISA) in 1974 to establish a national, uniform body of law relating to employee retirement and benefit plans. The court ruled that ERISA law clearly requires that each employee's insurance plan documents control the identity of the employee's beneficiaries.

Noting that an employer may operate in multiple states and that an employee may live in one state and the employee's ex-spouse and other beneficiaries may live in yet several other states, the Pennsylva-

nia Supreme Court recognized that one divorced employee's benefits could be affected by the divorce and estate laws of multiple states. Acknowledging the importance of ERISA's prevailing over potentially conflicting state laws on the administration of employee benefit plans in divorce cases, the court found ERISA law controlling.

The court also noted that a key purpose stated in ERISA is that the administration of all employee benefit plans must be uniform as to all employees in the plan; with national employers operating in multiple states, the administration of benefits simply would not be uniform for all employees if various state divorce laws were applied to one plan.

Ruling that ERISA has a "vast reach," the Pennsylvania Supreme Court held that the ex-wife was entitled to the \$40,000 payment. The court's decision would have been completely different if the insurance policy had been a private policy, purchased by the deceased man from an insurance company or agent. Private insurance policies are not subject to any ERISA regulation.

Had the deceased man's life insurance been payable on a private policy unrelated to his employment benefits, Pennsylvania law automatically nullifying the ex-wife's beneficiary status upon divorce would have been controlling and the policy payment would have gone to the man's nephew.

If you have any employment benefits, whether pension, retirement savings, or life insurance, all death benefits on the plans will be paid according to the last beneficiary designation you provided to your employer before your death. If you are divorced or divorcing,

review your plan documents, and make any appropriate changes that are supported by your settlement agreement or court orders.

If you plan to leave private life insurance to your ex-spouse, it is best to reissue a new beneficiary designation after the issuance of the divorce decree to be sure that your intentions are clear and are followed by your private insurance provider.

Crime

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Victim's Compensation Fund that provides benefits to some victims of crime. Local law enforcement authorities regularly assist victims in applying for Crime Victim's Compensation Fund benefits. If you suffer any losses directly as the result of the commission of a crime, be sure to provide full documentation of your losses to the law enforcement authorities involved in the prosecution. You may be able to collect benefits or restitution for your losses.

A Picture Is Worth . . .

If you are injured in an accident, photograph or videotape your injuries as soon as possible. A graphic picture can be very helpful when talking to an insurance adjuster or a jury.