

be sure that the policy and related beneficiary designation will be maintained as needed is to name the custodial parent as the owner of the contract. Alternatively, if that parent is not to be the owner the divorce decree or property settlement agreement might dictate that the custodial parent be given notice of any changes in the policy such as a change of beneficiary, the lapse of the policy, or loans taken against the cash value. On the other hand, from the perspective of the supporting parent, there is a need to be sure that the policy's cash value and death proceeds will be used for the benefit of the children and not dissipated by the former spouse. That may be achieved by putting the policy into a trust managed by an independent trustee.

In any case, a good preliminary step to all of the above planning is to have the proposed insured go through the underwriting process prior to signing the settlement agreement. That's because the desired coverage may not even be available due to health issues or the premiums may be prohibitively expensive.

Another consideration is that when looking at existing permanent life insurance in connection with a property settlement agreement it should be understood that such coverage may have financial significance beyond its cash surrender value. That is particularly true with respect to an insured that has terminal health problems or is over the age of 70 since they may be able to sell the policy for more than its cash value. Further, this may even be true with respect for a term policy when the insured's life expectancy is less than the remaining duration of the policy.

Lastly, while many states have laws that automatically revoke beneficiary designations upon divorce, ERISA preempts those laws when it comes to beneficiary designations for coverage under pension and welfare benefit plans.³ That means a plan administrator will still pay the death benefit to a divorced spouse when that divorced spouse is the beneficiary on the plan's records. An exception to that rule may exist when that beneficiary has made an explicit and voluntary waiver of their rights as a beneficiary under a consent divorce decree.⁴ The bottom line, however, is that when a divorce occurs the parties should make the proper changes in their beneficiary designations on the plan records.

Federal income tax laws are complex and subject to change. The information in this memorandum is based on current interpretations of the law and is not guaranteed. Neither Nationwide, nor its employees, its agents, brokers or registered representatives gives legal or tax advice. You should consult an attorney or competent tax professional for answers to specific tax questions as they apply to your situation.



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³ Englehoff v Englehoff, 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001)

⁴ Estate of Rowley v MacInnes, Mic. Ct. Akpp., 94-177969-DO (1/8/04)