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CHANGING A LIFE INSURANCE BENEFICIARY BY WILL

INTRODUCTION

A life insurance policy and a will are two instruments of similar character in certain respects, but dissimilar in that their validity is dependent upon different bases. Both instruments are substantially inoperative until death, and each relates to an ownership quality in the insured or the testator. However, the power of disposition of the proceeds of a life insurance policy exists by virtue of a contract with an insurer, whereas testamentary disposition of one's property by will is based on a power granted by the state. The objective similarity of disposition has sparked a continuing problem in one particular aspect of interaction between the two methods. This problem is the extent of power in the insured to change the designated beneficiary of the life insurance policy by means of his will.

THE GENERAL RULE: ITS BASIS, QUALIFICATIONS AND EXCEPTIONS

The general rule is that the insured may not change the beneficiary he designated in the insurance policy by means of his will.¹ This is because the powers of disposition of life insurance proceeds emanate from contract provisions in the policy rather than the statute of wills, and unless a change of beneficiary by will is made operative under the con-

1. *Suga v. Suga*, 35 Ill. App. 355, 182 N.E.2d 922 (1962); *Stone v. Stevens*, 155 Ohio St. 595, 99 N.E.2d 766 (1951); *Wannamaker v. Stroman*, 167 S.C. 484, 166 S.E. 621 (1932). See W. VANCE, *VANCE ON INSURANCE* 686 (3rd ed. B. Anderson 1951). See also *Minnesota Life Ins. Co. v. Allen*, 401 S.W. 2d 589 (Tenn. 1965). The opposite proposition was presented in this case. The insured's estate was initially made the beneficiary of his life insurance policies, and the insured's will contained a provision for the disposition of the insurance proceeds for the benefit of designated creditors. Without modification of his will, the insured, in compliance with the policy provisions for making a change of beneficiary, made his wife the beneficiary. The creditors contended: (1) the will was the controlling instrument, and insured could only revoke the provision in the will made for the creditor's benefit by a writing in conformance with the state statute of wills; and, (2) since a will speaks as of the time of death, the will should govern since it took effect after the "attempted" change of beneficiary. The Court held that the change of beneficiary operated as an ademption of the provision in the will, since the insured could not directly or indirectly dispose of insurance proceeds by will so as to defeat the rights of the named beneficiary therein.

tract of insurance,² the majority of courts reject the validity of such a change. Also, the general rule denying change of beneficiary by will is inapplicable when the insured has named his executors,³ his estate,⁴ or no one at all⁵ as his beneficiary in the policy of insurance. However, a policy obtained by the insured on his life is his property and subject to his power to change beneficiaries if he has reserved such power, unless such power has been contracted away⁶ or made part of the terms of a divorce decree.⁷ These exceptions and qualifications are established principles of insurance law. However, it is at this point that all essential agreement ends and conflicting principles and their corresponding requirements begin. This split of agreement deals with the power of the insured to make a testamentary change of beneficiary when the provisions of the policy do not expressly contemplate a testamentary change.

THE MATTERS IN DISPUTE

The courts disallowing testamentary changes of beneficiaries often infer the possibility of a double payment by the insurer, or at least an invitation for litigation should the insurer pay this newly designated beneficiary of the will.⁸ The opposing and better answer is that under the present law the contesting beneficiaries invariably end up in court litigating their rights to the proceeds of the policy anyway. Also, the

2. *Martinelli v. Cometti*, 133 Misc. 810, 234 N.Y.S. 389 (1929). A group insurance policy required only "approval" by the company for a change of beneficiary. The court held that such contention was waived by the company, and insured's will, wherein he provided for a different beneficiary than the one designated in his policy, was given effect; cf., *United States v. Pahmer*, 238 F.2d 341 (2d Cir. 1956). This case involved a National Life Insurance policy, and is a typical example of the liberal construction the Federal Courts apply to the Regulations of the Veterans' Administration with respect to allowing an insured to make a change of beneficiary by his last will. Although the Regulations stated that a "beneficiary designation, but not a change of beneficiary, may be made by last will and testament duly probated," a change of beneficiary by last will was permitted even though there was no evidence in the record to show that the will was ever admitted to probate.

3. J. MURPHY, *MURPHY'S WILL CLAUSES* 115.6 (1966).

4. See *In re Shaech's Will*, 252 Wis. 299, 31 N.W. 2d 614 (1948).

5. See *Capers v. White*, 195 Va. 1123, 81 S.E. 2d 597 (1954) (no beneficiary named in policy, but policy contained a facility of payment clause).

6. *Garabart v. Burns*, 130 Tex. 518, 111 S.W. 2d 1100 (1938); *Adkinson v. Nearor*, 243 Ala. 133, 8 So. 2d 816 (1942).

7. *Dixon v. Dixon* 184 So. 2d 478 (Fla. 1966) (the divorce decree required decedent to maintain and keep current with his employment all policies on his life; these policies payable to his minor children).

8. *Wannamaker v. Stroman*, 167 S.C. 484, 166 S.E. 621, 623 (1932).

insurer should have no realistic fear of double liability⁹ for the usual course under present law is for the insurer to interplead the proceeds upon hearing of an assertion that a change of beneficiary has been made.¹⁰ In one case¹¹ where the insurer paid the beneficiary designated in the policy, the beneficiary named in the will brought action against the other beneficiary and not the insurer.

The majority of courts rely heavily on the contractual relationship between the insured and insurer with regard to the method of changing beneficiaries. Any deviation, they say, from the methods provided in the policy would be too burdensome for the insurer to ascertain before making payment.¹² The opposing view is that these provisions are for the protection of the insurer, not the beneficiary,¹³ and without notification that change of beneficiary has been made, the insurer may pay the designated beneficiary with impunity.¹⁴ However, when the insurer has notice of a contended change of beneficiary and interpleads the proceeds, the previously designated beneficiary should not be able to show a deviation from the established methods of change, since such provisions are made for the convenience¹⁵ and benefit of the insurer¹⁶ or both the insurer and the insured.¹⁷ A life insurance policy is the property of the insured and it is he who has sacrificed his money in its maintenance. Therefore, proper weight should be given to his clear expressions of intent and desire¹⁸ when examining the policy provisions relating to changes of beneficiary.

The most controversial aspect of the changing of beneficiaries has to do with the theory of vesting. Many of the courts, in refusing a testamentary change of beneficiary, rely on the rule which states that

9. See *Pedron v. Olds*, 193 Ark. 1026, 105 S.W. 2d 70, 72 (1937).

10. See, e.g., *Minnesota Life Ins. Co. v. Allen*, *supra* note 1; *Capers v. White*, *supra* note 5; *Stone v. Stephens*, *supra* note 1.

11. *Cook v. Cook*, 17 Calif. 2d 639, 111 P. 2d 322 (1941).

12. *In re Ziolkowski's Will*, 47 Misc. 2d 752, 263 N.Y.S. 2d 72, 73 (1965); *Second National Bank v. Dallman*, 209 F.2d 321 (7th Cir. 1954).

13. *Dixon v. Dixon*, *supra* note 7, at 481; *Rindlaub v. Travelers Ins. Co.*, 1190 Ohio App. 125, 196 N.E. 2d 602, 603 (1962); *United States v. Pahmer*, *supra* note 2, at 433.

14. *Pedron v. Olds*, *supra* note 9, at 72.

15. *Doss v. Kales*, 94 Ariz. 247, 383 P. 2d 169 (1965).

16. *Sears v. Austin*, 292 F. 2d 690, 693 (9th Cir. 1961).

17. *Pedron v. Olds*, *supra* note 9, at 71; *Contra*, *Wannamaker v. Stroman*, *supra* note 8, at 623. (Such provisions are said to be for benefit and protection of the insurer and the beneficiary.)

18. *Stone v. Stephens*, 155 Ohio St. 595, 99 N.E. 2d 766, 770 (1951) (dissent).

upon the death of the insured, the right to the proceeds of a life insurance policy becomes absolutely vested in the designated beneficiary.¹⁹ Even those courts which hold that the provisions dealing with a change of beneficiary are for the benefit of the insurer deny a testamentary change of beneficiary because of the vesting in the designated beneficiary. These courts maintain that although the insurer, by interpleading the proceeds, waives any conditions the contract has imposed, the insurer may not and cannot waive the vested rights of the designated beneficiary.²⁰ Other courts, in disagreement, maintain that when the insurer waives the provision requirements made for his benefit, such requirements lose their importance, and the rights and equities are left to the court's determination.²¹ The proponents of the attempted change rely on the intent of the insured, and hold that his most recent expression of intent should control in light of the waiver of the insurer.²² The majority of courts denying the efficacy of such expression of intent insist that wills are without legal effect prior to death.²³ In the recent case of *Suga v. Suga*,²⁴ the policy provisions dealing with change of beneficiary provided that a change was effective upon execution of a request. Nevertheless, the Court held a request by way of will invalid since "(t)he insurance certificate required that the written request to change the beneficiary take effect as of the date of execution," but the will did not take effect until death.²⁵ The proponents of the testamentary change assert the immateriality of the will's legally speaking at death. They view the will as an expression of intent during the lifetime of the insured-testator, and an important expression; for it has been stated that ". . . a will is of much more convincing import as to the intentions of the insured than any informal writings or expressions of desire would be."²⁶

19. *Carter v. First National Bank*, 185 So. 361, 363 (Ala. 1938); *Cook v. Cook*, *supra* note 11, at 327; *Stone v. Stephens*, *supra* note 18, at 769; *Young v. American Standard Life Ins. Co.*, 398 Ill. 565, 76 N.E. 2d 501 (1947).

20. *Dogariu v. Dogariu*, 306 Mich. 392, 11 N.W. 2d 1 (1943); *Davenport v. Bankers Life Co.*, 178 Neb. 591, 134 N.W. 2d 250, 261 (1965); *Bales v. Croom*, 400 S.W. 2d 261, 264 (Tenn. 1964).

21. *In re Wolfe's Will*, 47 Misc. 2d 124, 262 N.Y.S. 2d 5 (1965).

22. *Stone v. Stephens*, *supra* note 18, at 770 (dissent); *Pedron v. Olds*, *supra* note 9, at 72.

23. *Cook v. Cook*, *supra* note 11, at 327.

24. 35 Ill. App. 355, 182 N.E. 2d 922 (1962).

25. *Id.* at 924.

26. *Stone v. Stephens*, *supra* note 22, at 777 (dissent).

One very convincing argument given by the courts in refusing a testamentary change of beneficiary is that public policy requires that life insurance proceeds be paid as promptly as possible to a beneficiary after the death of the insured. Therefore, the insurer should pay the beneficiary designated in the policy, because allowing changes of beneficiary other than by means firmly established in the contract would open the door to uncertainty as to the beneficiary in each life insurance policy where the insured has retained the right to change the beneficiary.²⁷ The basis of this view is possibly the not illogical inference that the beneficiary in all probability is of such a close relationship as to be saddled with the burial expenses of the insured. However, a type of life insurance which precludes delay through litigation by prompt payment through means of a "facility of payment clause" already exists in the form of Industrial Life Insurance.²⁸ Those people desirous of such protection should be encouraged to invest in this type of policy. The fact remains that an ordinary life insurance policy with a right reserved to make a change of beneficiary is the property of the insured since it was he who paid the premiums that kept the policy in force. Surely his manifestation of intent should have great weight!²⁹

UNDERLYING REASONS FOR THE UNCERTAINTY IN THE LAW

Aside from the above reasons upon which the courts rely to allow or disallow a testamentary change of beneficiary, there exists underlying causes for the wide diversity in the decisions. One cause, succinctly stated, is that in the area of law concerning the changing of beneficiaries without strict compliance with policy provisions, "the courts appear to weigh heavily the equities of the adverse claimants."³⁰ A survey of the various cases will show that the courts scrutinize the relationship of the claimants to the insured,³¹ and where a court feels that the insured labored under a gross mistake, it may ignore precedent to achieve a just

27. *Wannamaker v. Stroman*, *supra* note 8, at 623. It is interesting to note that this expression of the need for prompt payment occurred in a proceeding decided at the height of the Depression.

28. W. VANCE, *VANCE ON INSURANCE* 698-702 (3rd ed. B. Anderson 1951). The contract authorizes payment by the insurer to any person the insurer feels to be equitably entitled to the proceeds by reason of burial expenses.

29. *Sears v. Austin*, 292 F.2d 690, 693 (9th Cir. 1961); *United States v. Pahmer*, 238 F. 2d 431 (2d Cir. 1956).

30. VANCE, *op. cit. supra* note 28, at 684.

31. *See Wannamaker v. Stroman*, 167 S.C. 484, 166 S.E. 621, 622 (1932). Here the South Carolina Court was called upon to allow a change of beneficiary by will, and

result.³² Such observations may also indicate that other courts may consciously or even subconsciously reach their conclusions on the basis of facts and circumstances which do not even reach the record, or, reaching the record, are matters not seemingly thrown into the scales of determination.

Another cause for the uncertainty and confusion surrounding the area of law dealing with changes of life insurance beneficiaries by will arises in the wording of the insurance policy provisions. The expressly approved methods of change vary not only with the companies, but with the type of policy.³³ Formerly, ordinary life insurance contracts predominated in the form of "old line policies." These contracts reserved no power in the insured to make a change of beneficiary,

the plaintiffs relied upon *Hunter v. Hunter*, 100 S.C. 517, 84 S.E. 180 (1915), where the court had allowed a testamentary change of beneficiary. The court refused to follow *Hunter* and said:

. . . [T]hat the distinction in part was that the former case was one of tragic calamity; the insured was shot by the paramour of his wife as he was entering his own home to their surprise, and he died the following day after having made a will bequeathing the proceeds of an insurance policy which had been payable to the unfaithful wife to his mother.

32. See *In re Wolf's Will*, 47 Misc. 2d 124, 262 N.Y.S. 2d 5, 7 (1965). The designated beneficiary of insured's policy was a bank as trustee of a trust created by his will. Insured revoked his will but never named a new beneficiary under the policy since he must have thought that his wife, as a prior beneficiary, was reinstated. The Court stated the general rule requiring compliance with the policy provisions to change a beneficiary. Nevertheless, the Court made an exception by saying:

The provisions regarding the changing of beneficiaries are solely for the benefit of the insurer, and when they are waived by the carrier's withdrawing from the proceedings . . . , the insured's failure to comply with such provision is not controlling and the rights and equities of the [claimants] must be left to court's determination regardless of such failure

33. *Sears v. Austin*, *supra* note 29, at 691-692 (federal employee's group life policy; ". . . proper form secured from the U.S. Civil Service Commission."); *Wannamaker v. Stroman*, *supra* note 31, at 621 (whole-or ordinary life; ". . . upon return of policy to insurer with insured's written request."); *Carter v. First National Bank*, 185 So. 361 (Ala. 1938) (whole-or ordinary life; ". . . filing with the company a written request, accompanied by . . . policy, such change to take effect when endorsed by the Company."); *Suga v. Suga*, 35 Ill. App. 355, 182 N.E. 2d 922, 923 (1962) (employee's group life; ". . . by written request filed at Home Office. . . . Such change to take effect as of date of execution of such request, whether or not employee be living at the time of such filing."); *Rindlaub v. Travelers Ins. Co.*, 1190 Ohio App. 125, 192 N.E. 2d 602, 606 (1962) (whole-or ordinary life; ". . . effective only when such change shall have been approved in writing by the company."); *Parks' Ex'rs. v. Park*, 288 Ky. 435, 156 S.W. 2d 480, 482 (1941) (whole-or ordinary life; ". . . by filing notice thereof at the Home Office and such change shall take place upon such filing and not before."); *Dogariu v. Dogariu*, 306 Mich. 392, 11 N.W. 2d 1, 3 (1943) (whole-or ordinary life; "No change in this policy shall be valid unless approved by an executive officer of the company, and such approval be endorsed hereon.").

and the designated beneficiary acquired a vested interest therein.³⁴ Presumably, a designated beneficiary's vested interest was subject to divestment only by the failure of the insured to pay the premiums. However, when insurance companies made the transition from "old line policies" to that type of policy prevalent today, where the insured may reserve the right to change beneficiaries, stringent methods of effectuating such change were required. Typical requirements are the return of the policy to the insurer, with the insured's written request, the change being of no effect until the insurer made a notation thereof on the policy itself.³⁵ These harsh rules, primarily made for the purpose of protecting the companies from double payment, have had no little influence in bringing about the harsh rules in many of the jurisdictions in litigation concerning the testamentary change of beneficiaries.³⁶

More recently, however, the requirements for a change of beneficiary have been greatly relaxed. The common requirements are merely some sort of written notification to the insurer of a request to change the beneficiary, and some policies also require the "approval" of the insurer.³⁷ This relaxation may have been brought about by the interest of the life insurance business to improve the marketability of their product; or, the protection provided by interpleader may have encouraged the insurance companies to be more lenient in the provisions for a change of beneficiary. No matter what the cause of this liberalization of procedure may be, the insurance companies must be less fearful of double payment at the present time. Regardless of the liberalization of procedure for making a beneficiary change, the courts interpret a policy provision for the making of a change to be an exclusive method, even where the contract is hazy or unclear.³⁸

The shibboleth of the majority of the courts in determining whether a change of beneficiary has been properly effectuated is "substantial compliance"³⁹ with the policy provisions. The test of "substantial com-

34. 2 APPLEMAN, INSURANCE LAW Sec. 901, 443, n. 15 (1966).

35. *Supra* note 33 (examples of the stringent requirements: Wannamaker v. Stroman, Carter v. First National Bank).

36. *See, e.g.*, Wannamaker v. Stroman, *supra* note 33.

37. *Supra* note 33 (examples of the more liberal requirements: Suga v. Suga, Rindlaub v. Travelers Ins. Co., Parks' Ex'rs v. Park).

38. VANCE, *op. cit. supra* note 28, at 685, citing Parks' Ex'rs v. Park, *supra* note 33; Dogariu v. Dogariu, *supra* note 33.

39. Zervas v. Zervas, 338 F. 2d 299 (8th Cir. 1964); Shenandoah Life Ins. Co. v. Harvey, 242 F. Supp. 680, 683 (D. Md. 1965); Boles v. Croom, 400 S.W. 2d 261, 262 (Tenn. 1964).

pliance" has been defined either as a requirement that the insured has done everything reasonably within his power to effect such a change⁴⁰ or that a change will be given effect if all that remains to be done is a ministerial duty on the part of the insurer.⁴¹ It should be noted, however, that in policies calling for "filing," "approval," "written notice," or indeed endorsement by the insurer, the insurer cannot prevent a change by failure or refusal to act.⁴² Therefore, if notification to the insurer by way of will can be held to constitute adequate notification to the insurer, it should follow as a natural consequence that nothing remains to be done on the part of the insurer except a ministerial act.

As should be apparent, uniformity of rules and methods in making changes of beneficiary has been absent in both the court applications of the law and in the procedures required by the insurance contracts. Some courts maintain that their rules are well-settled,⁴³ but exceptions can be found where the courts had to exercise some of their equitable powers to bring about a justifiable result.⁴⁴ The fact remains that not all laymen know of the conflicting court decisions, and many seek to make testamentary dispositions of their life insurance proceeds. Thus, in many instances, the final disposition of the proceeds is contrary to the express intentions of the insured when the courts refuse to accept his method of change.⁴⁵

A PROPOSED SOLUTION

A remedy is necessary not only to bring uniformity into that area of law dealing with the changing of life insurance beneficiaries, but to give a keener respect to the intentions of the policy owner. The contractual relationship between the insurer and the insured remains very relevant, but it must be remembered that a life insurance contract is a contract of adhesion. Also, the only valid interest an insurer should

40. *Acacia Mutual Life Ins. Co. v. Feinberg*, 318 Miss. 246, 61 N.E. 2d 122 (1945); *O'Connell v. Brady*, 136 Conn. 475, 72 A. 2d 493 (1950).

41. *Lundeen v. Cordner*, 354 F. 2d 401 (8th Cir. 1966); *Luhrs v. Luhrs*, 123 N.Y. 367, 25 N.E. 888 (1890); *Brajowich v. Metropolitan Life Ins. Co.*, 189 Minn. 123, 248 N.W. 711, 713 (1933).

42. *Boles v. Croom*, *supra* note 39, at 264; *Rindlaub v. Travelers Ins. Co.*, *supra* note 33, at 606-607.

43. *See, e.g., In re Estate of Hoyer*, 211 N.Y.S. 2d 21, 23 (1961); *Wannamaker v. Stroman*, *supra* note 33.

44. *See, In re Wolfe's Will*, *supra* note 32; *Hunter v. Hunter*, *supra* note 31.

45. *See, e.g., In re Ziolkowski's Will*, 47 Misc. 2d 752, 263 N.Y.S. 2d 72 (1965); *Suga v. Suga*, *supra* note 33; *Bowman v. Bowman*, 3 Ohio Misc. 161, 210 N.E. 2d 920 (1965).

have with respect to a beneficiary is the guarantee that the insurer will not have to pay two of them. The existing approaches to the problem have proved unsatisfactory. The courts pay little or no heed to the intent of the insured. Even in the face of the complete disinterest of the insurer as to which beneficiary should receive the proceeds, the courts require close conformity to the policy provisions. These requirements must be met no matter how unclear the policy provisions are. Even if the will can be said to fulfill the requirement of notification, the courts nevertheless refuse to acknowledge the effectiveness of the will with respect to the insurance proceeds. These majority courts will only give effect to the insured's testamentary change of beneficiary when it suits their purpose to punish an unfaithful beneficiary or to correct a glaring mistake of the insured.

Standardization of the policy provisions for making a change of beneficiary would be a step in the right direction in the search of a solution to the problem. Such uniformity could be the result of legislative or administrative proscription, or concerted action among the insurance companies themselves.⁴⁶ This would not be a proscription of the entire policy, as is the case of the very successful Standard Fire Policy which has been adopted in almost every state,⁴⁷ since the purposes for which life insurance contracts are made are too divergent.⁴⁸ However, the provisions for a change of beneficiary in those policies in which the insured has reserved such power could be made more convenient, while at the same time creating uniformity. Such a uniform provision should enable the insured to change beneficiaries by way of his will, especially in view of the fact that the policy provisions often remain unread by the ordinary laymen-insured,⁴⁹ and the will is the method by which these people most often seek to effectuate a change of beneficiary not in exact conformance with the policy provisions. To prevent an unintentional change, it should be required that a clear expression of intent be shown with reference to a specific policy. This would be necessary to prevent assertions that a general power of appointment or even the "catch-all" residuary clause has constituted a change of beneficiary. In any event, the insurer would continue to be protected by interpleader, and, it should be established in the policy that the insurer is immune from suit if it should pay the prior beneficiary before any notification of a

46. R. KEETON, BASIC INSURANCE LAW 58-60.

47. VANCE, *supra* note 28, at 58.

48. *Id.* at 59.

49. *Id.* at 60.

change of beneficiary by will. As a result, any litigation concerning a testamentary change of beneficiary would continue to be between the beneficiaries. It is hoped that litigation would be minimized with such a provision because the broader delineation of the methods of change would be apparent to the parties.

CONCLUSION

In conclusion, it is evident that the problems relating to a testamentary disposition of life insurance proceeds are complicated and varied. Although liberalization of the methods required to effect a change of beneficiary has accompanied the development of life insurance policies as they exist today, the old harsh rules and their rationales have been retained. These rules existed predominantly for the protection of the insurer and insured rather than the beneficiary. Now, however, the insurer is protected by interpleader, and the protection provided for the insured should not be used against him. More emphasis must be given to the most recent and clear manifestation of intent of the insured, for it is he who owned the policy and kept it operative. A standardization and liberalization of the contract provisions relating to the change of beneficiaries would improve the existing inequities.

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