OMBUDSMAN
FOR LONG-TERM INSURANCE

OMBUZZ

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BENEFICIARY NOMINATIONS

We have recently had National Wills week, with a focus on the need to draft and keep one's will up to date. A beneficiary nomination is an alternative way of directing who should benefit on one's death from a life insurance policy. In a previous newsletter "Ombuzz 2" we had written about the need to keep such nominations up to date http://www.ombud.co.za/publications/newsletters?start=20.

In this Newsletter we deal with two other issues: Nominating a minor as a beneficiary and nominations when the policyholder is married in community of property.

The advantages of a beneficiary nomination:

- The payment can be made without having to wait for the estate to be wound up. Of course the payment can only proceed smoothly without delays if there is no uncertainty about the nomination, the manner of payment and no challenges from other potential beneficiaries.
- The proceeds of the policy do not fall into the estate and therefore no executor's fee is payable on the benefit.

Nominating a minor as a beneficiary

The legal situation is that payment should be made to the legal or natural guardian of the minor. It has been our experience that different insurers deal with minor beneficiaries in different ways. Insurers are sometimes reluctant to pay to a guardian for the benefit of a minor even though, in terms of legislation, that is how payment should be made. Some insurers will pay into the bank account of the minor; others do pay to the legal or natural guardian; some insurers insist on paying into a trust for the benefit of the minor; at least one insurer insists on the policyholder consenting at nomination stage to payment into a trust.

The problem of payment to minors becomes even more critical if there is no natural guardian and a legal guardian has not been appointed. Insurers struggle with this situation and there are also differing approaches, according to a survey we did. In such a situation some insurers pay into the Guardian's

Fund, other insurers request an indemnity from the caregiver of the minor if the amount is small, yet another insurer holds on to the money until the minor turns 18. This may not be what the policyholder wanted and may cause financial problems for the minor and his/her caregiver. An added difficulty where there is no guardian is the fact that the insurer can also not pay into a trust as there is no one who can consent to such payment.

The obvious solution is to have a guardian appointed but this is a costly and burdensome process, especially for parties who are not financially well-off and where the sum insured is small the expense may seem unjustified.

It is therefore important for a policyholder to find out how the particular insurer will approach the situation. In that way the policyholder can ensure that the payment is made in a way that fulfils his/her wishes.

Case Study 1

A policyholder/life insured had nominated her minor daughter as a beneficiary on a life policy. On the life insured's death the insurer insisted on paying the benefit of R1 000 000 into a trust. The grandmother of the beneficiary had been appointed as the legal guardian in terms of a High Court order. (The father of the minor had never been part of her life). The grandmother complained to the office because of the insurer's refusal to pay to her.

We advised the insurer that in terms of the law they had an obligation to pay the grandmother. They explained that they were willing to pay the benefit but would prefer to pay into a trust to safeguard the money for the minor. We then met with the complainant and requested her to consider whether such an arrangement would not be acceptable to her. There is a cost associated with a trust but she would be able to access the funds for her granddaughter's needs and at the same time there would be professionals handling the investment of the money until her granddaughter turned 18. She agreed to the arrangement, which had not previously been understood by her and the money was paid into a trust for the benefit of the minor.

Where there is more than one guardian that can also give rise to problems. In terms of legislation (S18 [4] of the Children's Act) each of the guardians would be competent to act independently and without the consent of the other. If the insurer is faced with such a situation who does it pay? This is particularly problematic where the guardians are at loggerheads, e.g. where the two guardians are divorced or in the process of getting divorced. The legislation does not deal with this situation and the insurer's decision for choosing one guardian over another could be challenged by the other guardian. Such a dispute would have to be resolved by a court of law.

<u>What happens if the policyholder is married in community of property and nominates a beneficiary other than his/her spouse?</u>

The following case study demonstrates our approach. The outcome was also similar to the recent unreported court case in the High Court, Gauteng Local Division, case number 10834/2013.

Case Study 2

The life insured, who was married in community of property to the complainant, had policies with two insurers. While married she had signed forms nominating her daughter as the beneficiary. The forms made provision for the signature by the insured's spouse if married in community of property, but in neither case had the husband signed his consent on the form.

Following the death of the insured both insurers made payment to the nominated daughter. In both

irregular and had resulted in him losing his one half share of the proceeds to which he was entitled as a consequence of the marriage being in community of property. He stated that his prior written consent to the nomination had been required (in terms of Section 15(2)(c) of the Matrimonial Property Act). Both insurers rejected his claims and contended that the insured had not advised them that she was married in community of property. The husband then approached us for assistance.

Our view was that in the absence of any indication in documents in the insurer's possession that the insured had been married in community of property, there was no obligation on the insurers to investigate that matter.

We were of the opinion that the insured must provide information about his/her marital status. Since the insured had not indicated otherwise on the beneficiary nomination form, the insurers could not have known that the document was being signed in breach of the provisions of Section 15(2)(c) the Matrimonial Property Act. We suggested, although we could not assist him in this regard, that the complainant might pursue the remedy against the estate provided for in legislation.

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