

CASE IN POINT

Sales Tax Estate Planning Underwriting & Product Newsletter

Make sure your beneficiary designations are current



I recently wrote a blog illustrating [how disinherited family can end up with estate assets](#). The situation dealt with improperly completed amendments to wills which resulted in a bequest that was not intended. Outside of Quebec, people can also leave money to family, friends or charities on death by naming them as beneficiaries directly on Registered Retirement Savings Plans (RRSPs), Registered Retirement Income Funds (RRIFs), pension plans, individual and group life insurance, segregated fund contracts and on Tax Free Savings Accounts (TFSAs) regardless of the issuer. Properly done, the proceeds of these plans pass to the named beneficiaries outside of the estate and are not subject to probate or estate administration fees.

Documents such as separation agreements, which typically contain clauses that release the parties from making any claims against each other's estates, may not affect beneficiary designations in retirement and life insurance plans. A May, 2005 case, *Gaudio Estate v. Gaudio*¹, illustrates that courts require clear evidence of an intention to change a beneficiary designation.

In this case, Francesco Gaudio designated his wife, Debra Ann Gaudio, as the beneficiary of his RRSP with the Bank of Nova Scotia, his group RRSP with the Great-West Life Assurance Company and his group life insurance with Industrial Alliance (National Life).



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Peter works with independent advisors and other professionals raising awareness on issues and concerns faced by affluent individuals, professionals and business owners. He supports efforts in researching and developing optimal solutions for clients aimed at improving their financial well-being and supporting their personal wishes and lifestyles. He annually provides 100's of workshops, seminars and technical support throughout the country on tax, retirement income and estate planning issues, concepts and strategies to both advisors and consumers. As an accredited Registered Financial Gerontologist, a good deal of his time is spent on building awareness and educating people of all professions who work with or specialize in the needs, expectations and issues of elders. Comprehensive lifestyle planning is an important element of these processes.

The Sales, Tax, Estate Planning, Underwriting & Product (STEPUP) team provides internal and broker support, including seminars, education, advanced concept illustrations & Client case technical consultations.

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The couple formally separated in October of 2004, completing a separation agreement consisting of “general boilerplate clauses” by which each of the parties released their entitlement to the other party’s estate. The separation agreement did not specifically revoke the beneficiary designations on Francesco’s RRSPs or his group life insurance and Francesco did not change or revoke the beneficiary designations before or after signing the separation agreement.

Francesco passed away a few months later in January, 2005. He had no will. His only surviving family were his mother and siblings. An argument ensued as to who was entitled to the monies in the RRSPs and life insurance plans. Litigation ensued.

The Court found the beneficiary designations in favour of Debra, the ex-wife, were still effective despite the separation agreement between her and the now deceased Francesco. Justice Clark J found that the general releases in the separation agreement “did not waive or revoke the right of the named beneficiary”² to receive the proceeds of the two RRSPs and the life insurance. The court also found no evidence of bitterness between the parties and, no evidence that Francesco intended to change his beneficiary designations on his RRSPs and group life insurance. The court ordered the proceeds of the RRSPs and group life insurance be paid to the ex-wife. Francesco’s family were not entitled to any of the proceeds because the proceeds did not form part of his estate, blocking any claims the family tried to make.

Courts require clear evidence of an intention to change the beneficiary designation of plans...

Was this what Francesco intended? The Court found that it was immaterial whether Francesco left Debra as the beneficiary due to an error, an erroneous assumption that he didn’t need to do anything to change the beneficiary or that he just didn’t get around to it. It was not the Court’s decision to speculate on this matter. Had Francesco simply revoked the beneficiary designations in favour of his ex-wife, then in the absence of having named contingent beneficiaries, all of the proceeds of these plans would have been paid to his estate and distributed according to the provincial rules regarding intestacy.

Here is a planning point. Courts require clear evidence of an intention to change or revoke the beneficiary designation of plans that permit the naming of a beneficiary like the ones mentioned above. Documents such as separation agreements with general release clauses may not affect beneficiary designations in those plans.

Once again, review and stress test estate plans and documents to make sure they reflect your wishes and that they continue to do the job they were intended to do. Engage the services of accredited professionals to guide you and help you get it right.

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Related articles

- [How disinherited family can end up with estate assets](#)
- [Legacy or Estate Planning; What may you have forgotten?](#)
- [Planning for your digital assets and access when you are incapacitated or die](#)

Remember to click on highlighted text for links to related articles

¹ Source: Claudio Gaudio Estate Trustee v. Debra Ann Gaudio, Great-West Life Assurance Company, The Bank of Nova Scotia, and The National Life Assurance Company of Canada, Court File No. CV-5-003040-00, May 4, 2005. ² Source: Gaudio Estate, Re, [2005] O.T.C. 341 (SC)

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