

# Retirement Plan Death Beneficiary Provisions that Reduce Potential Liability

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When a retirement plan participant dies without a valid beneficiary designation on file, death benefits will typically be paid pursuant to the plan's default beneficiary provisions. These provisions should be drafted to avoid placing an undue burden on the plan administrator (which is often the plan sponsor). When the plan document requires the plan administrator to determine a participant's heirs, the process of administering the death benefit can be costly and time-consuming and may lead to the risk that the plan will have to pay a duplicate benefit. For example, a duplicate payment could result because children from a previous marriage were overlooked, the participant remarried after terminating employment, or competing heirs provide incomplete or misleading information. However, plans can be drafted to provide that the default beneficiary is the participant's surviving spouse, and if there is no spouse, the participant's estate. If the estate is not probated, the risk should be shifted from the plan administrator by requiring, under the terms of the plan, that a court must provide an order that directs the plan administrator regarding the allocable shares for the participant's beneficiaries.

Another common scenario is when a participant divorces but does not update his or her beneficiary designation on file with the plan. In that case, when the participant dies, the participant's ex-spouse could receive the death benefit if he or she is still named as the participant's designated beneficiary and the participant has not remarried. To avoid this scenario, the plan document could be drafted to provide that a divorce automatically revokes the participant's beneficiary designation of his or her ex-spouse, thus preventing the divorced spouse from being the designated beneficiary unless the participant affirmatively redesignates the ex-spouse after the divorce.

On the administrative side, the plan administrator should establish processes to ensure that beneficiary designations are complete and up-to-date and that death benefits are not prematurely paid without adequate due diligence. Any concerns should be resolved before funds are actually paid from the plan's trust. With sensible plan provisions and administrative procedures, the risk of fiduciary liability and duplicate plan payments can be significantly reduced.