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## When a Retirement Plan has the Beneficiary Blues

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If you've administered a retirement plan for any length of time, then you've probably "sung the blues" at some point when it comes to distributions to beneficiaries. Whether it's the hassle of incomplete beneficiary designation forms; the mathematical mystery of a split among beneficiaries that equals 110%; the puzzle created when a primary beneficiary is allocated 50% of the benefit and the "contingent beneficiary" is apparently allocated the other 50%; or the dilemma, in the face of no form, when a daughter submits the deceased participant's last will and testament as evidence of her mother's intent, you know the pain of the beneficiary blues.



### How to avoid the blues

**Check the plan for beneficiary provisions.** The first thing you should do is review your plan and ensure it has a default beneficiary provision. It should state something along the lines of "in the event that a participant fails to name a beneficiary or the named beneficiary, or any successive or contingent beneficiary, predeceases the participant, or the designation is invalid for any reason, then the benefit will be distributed in the following order of priority to . . ." Alternatively, the plan may reference the order of priority provided in the intestate law for the state of the deceased participant's residency. In either case, you will have a ready answer when you discover too late that no beneficiary has been validly designated to receive a deceased participant's benefits. If you are unable to find such language, take the appropriate action to have your plan amended to add a default beneficiary provision.

In addition to the default beneficiary provision, there are other helpful provisions when it comes to determining the appropriate beneficiary in a complicated situation. A plan may provide that a properly completed beneficiary designation form submitted to the administrator revokes all prior designations, and that, except for specified events, a divorce decree automatically revokes a participant's prior designation of a now former spouse as beneficiary.

**Review beneficiary designation forms carefully and immediately upon submission.** Reviewing beneficiary designation forms when they are first submitted will not avoid the issue created when a sole beneficiary passes away prior to the participant, but it will avoid the above mentioned 110% and 50% problems. In those cases, the administrator admitted that they thought a quick glance for beneficiary names and social security numbers, as well as the participant signature, was all that was needed. Before accepting a designation form from a participant's lawful agent, keep in mind that a power of attorney must specifically authorize an agent to designate a beneficiary. A simple reference to your retirement plans, or retirement benefits in general, is not enough. As in many aspects of plan administration, creating a checklist of required review steps will prove helpful to you.

### Know your options when you've got the blues

Get all the information you need for your determination. Where it is unclear on the face of all the plan documentation who the proper beneficiary is, you have to make a preliminary determination. You must decide whether you possess, or can obtain, enough information to make the beneficiary determination yourself, or if you need to ask a court to issue a declaratory judgment as to the proper beneficiary. You may consider numerous circumstances in processing your determination. You can take into account whether there is employer information outside of plan records, such as a life insurance beneficiary form, that provides you with confidence that your interpretation of a fuzzy beneficiary designation form is appropriate. You may also want to consider whether the relative size of the benefit means that imposing your interpretation of an unclear form is a low risk proposition and the costs of obtaining a declaratory judgment are disproportionately high, or vice versa.

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Remember you're wearing your fiduciary hat. Keep in mind that directing the distribution of retirement plan benefits is a fiduciary act. You must weigh carefully all of the circumstances surrounding the assessment of a beneficiary designation form, and appropriately process your determination. You may want to consult with your trusted advisors or even obtain an opinion from legal counsel.

Questions? Contact the Findley consultant you normally work with, or Sheila Ninneman at [Sheila.Ninneman@findley.com](mailto:Sheila.Ninneman@findley.com), 216.875.1927.