Legal Matters®

Family Law
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Supreme Court reminds divorced people: Update your beneficiary designations

One of the most important things a person can do after a divorce is to update his or her beneficiary designations, and indicate who should get the money in various accounts if the person should unexpectedly pass away.

A new ruling from the U.S. Supreme Court shows just how dangerous it can be to forget this step.

Most married people name their spouse as the beneficiary of their accounts, but in the stress following a divorce, they often forget to update these designations.

And even when people make an effort, they might not remember every account. Pensions, 401(k) plans, life insurance policies, brokerage accounts, bank accounts, and more may all have listed beneficiaries.

Remember that if you die, who gets the money in these accounts usually depends on who is the listed beneficiary – *not* who is named in your will. Even if your will says that "everything" will go to a new spouse or a child or other relative, the will doesn't govern a separate account such as a 401(k) or an insurance policy.

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Some states have tried to help divorced people by passing laws that say that a divorce automatically revokes these types of beneficiary designations. But even where that's true, you still need to name a *new* beneficiary, or the money might still go to someone who is not your choice.

Also, these laws don't always work, as the Supreme Court decision shows.

The case involved Warren Hillman, a federal employee in Virginia who had low-cost group life insurance through a special program for federal workers. Warren married Judy in 1996 and named her as his life insurance beneficiary, but divorced her two years later. In 2002, he married Jacqueline, but for whatever reason he never changed the beneficiary on his life insurance.

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FAMILY LAW BRIEFS

Reimbursements of health insurance premiums don't 'count' for child support

A divorced father who was reimbursed each month by his employer for the amount he spent on family health insurance premiums didn't have to count these payments as "income" when deciding how much child support he should have to pay, the Georgia Supreme Court ruled recently.

The couple had three children before divorcing. A judge ordered the father to pay $2,400 a month in child support. In calculating this obligation, the judge included as income the $935 a month that the father's employer reimbursed him for family health insurance that covered the children.

The father appealed, and the state high court agreed with him. The court noted that the only reason the father received these reimbursements was that he paid the exact same amount to an insurance company each month as a premium. Since there was no reason to think that the father would continue to receive these payments if he didn't pay for the health insurance, the court said it was wrong to treat the payments as part of the father's disposable income.

Family support payments may be tax-deductible

If you're paying alimony, you can deduct that amount on your income taxes. Child support payments, on the other hand, are not deductible. But sometimes there are in-between situations that are harder to figure out.

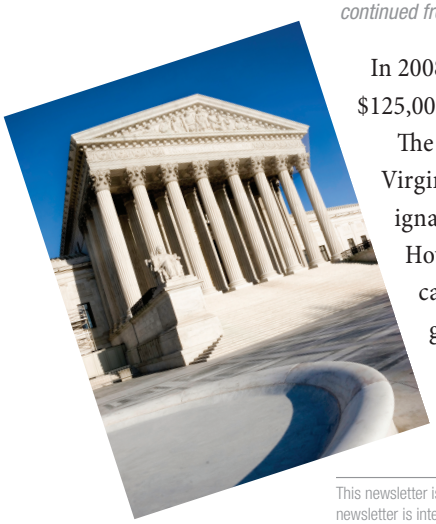
For example, while a California couple's divorce was pending, the husband made "family support" payments to his wife and children under to a temporary court order. When he filed his tax return, he deducted the $24,500 in support payments he had made that year.

The IRS challenged the deduction. It claimed the payments weren't deductible as alimony, because alimony payments aren't deductible unless they terminate automatically if the spouse receiving them dies.

But the U.S. Tax Court sided with the husband. It said that under California law, the husband could legally have stopped making the payments if the wife had passed away.

The court also said that the payments didn't count as child support because there wasn't a fixed portion that was designated specifically for the children.

Supreme Court: Update your beneficiary designations



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In 2008, Warren died. Both his wives claimed his $125,000 life insurance proceeds.

The Supreme Court noted that, under Virginia law, a divorce revokes beneficiary designations such as on a life insurance policy. However, because the life insurance in this case was arranged under a *federal* program – and federal law trumps state law – the Virginia law didn't apply. Therefore, all the money went to first-wife Judy, not second-wife Jacqueline.

So it's very important for people who have been through a divorce to make sure that all their beneficiary designations are updated.

And this is true even if you actually *want* your ex-spouse to remain as your beneficiary (as sometimes happens in an amicable divorce where children are involved). If a state law says that beneficiary designations are revoked by a divorce, you'll need to take extra steps to make sure your ex stays on as the beneficiary.

You've split up. Now who gets to keep Fido?

We tend to associate divorce with battles over child custody, the house and the bank account. But what about the dog?

Some 63 percent of American households own at least one pet, and spending on pets has tripled since the mid-1990s. Obviously, cats, dogs, and even hamsters matter greatly to people, so custody of pets after a breakup is going to matter as well.

But while you might think of your pooch as a member of the family, the law doesn't agree. In almost every case, the law treats an animal as a piece of property. That means that if there's a fight, a court will award the pet to one spouse or the other, without the opportunity for shared custody or visitation.

If one spouse can show a superior legal right to a pet – for instance, by proving that the pet was purchased before the marriage, or was inherited by that spouse alone or given as a gift to that spouse individually – then typically, that spouse will get to keep the pet.

It's possible that this will change. Recently, a judge in Maryland decided that a divorcing couple loved their dog equally, and that the animal's "best interests" were served by having them share custody. In another case, a Florida judge ordered visitation rights for a divorcing pet owner, although that decision was overturned on appeal.

But these cases are exceptions. If you both truly love your pets, the best solution may be to work out some joint arrangement with your ex for taking care of them, rather than letting a court divvy them up along with the furniture.

While you might think of your pet as a member of the family, the law doesn't agree. In almost every case, the law treats an animal as part of the property to be 'divided.'

Divorces involving dual citizenship pose big problems

Divorces that involve the laws of two different states can be very complicated. But the complications grow geometrically when a member of a divorcing couple is also a citizen of another country, or holds dual citizenship.

In such a case, it might not be clear which country has jurisdiction over the divorce. And if a foreign country has jurisdiction, the rules can change dramatically.

Every country takes a different approach to women's rights, acceptable grounds for a divorce, alimony, distribution of property, child support and custody. And sad to say, in some countries, the legal system is fraught with corruption or extremely biased against foreigners.

Things can get very complicated if a dual citizen wants to raise the children in his or her homeland – or if he or she takes the children there for a visit, and then decides not to return.

Visa issues can also create problems. Suppose a husband has left the U.S. and allowed his visa to expire. The wife, still in America, wants a divorce, but the husband can no longer legally return to participate in the proceedings, and the wife may have to pursue matters on his home turf.

If a divorce is handled by a foreign court, the rules can change dramatically.

The bottom line is that if either you or your spouse is a dual citizen and divorce is even potentially looming on the horizon, it's important to speak to a family law attorney as soon as possible. There may be preemptive steps that can be taken now to increase the likelihood that any future legal issues will be decided in a court where the law is favorable to you.

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High court eases path to Indian adoptions

Adoption proceedings are always complicated, but this is especially true when a child who has some Native American ancestry is adopted by a family that doesn't. That's because a federal law called the "Indian Child Welfare Act" sets a very high bar for adoption in these cases.

The law was enacted by Congress in 1978 in response to a history of abusive child-welfare practices that often split up Indian families unnecessarily.

However, a new Supreme Court decision makes things a bit easier for non-Indian adoptive parents.

In that case, Dusten Brown of Oklahoma, a member of the Cherokee Nation, conceived a child with his girlfriend, Christy. The couple planned to marry, but split up during the pregnancy. Brown relinquished his parental rights to Christy in a text message. Christy then arranged for a South Carolina couple to adopt the child, and they took custody after the baby was born.

Once Brown learned of the adoption, though, he fought it in court. A South Carolina judge ruled that the adoption couldn't go through because, under the federal law, Brown first had to be provided with services that could help him retain the child.

The couple appealed all the way to the Supreme Court. And that court sided with the adoptive parents, deciding that the federal law didn't apply to protect a biological father such as Brown, who had abandoned the child before birth and had never had custody before contesting the adoption.

The court said that if the biological father of a child with some remote Indian ancestry could use the federal law as a "trump card" at the last minute to override an adoption that was in the child's best interests, it would make it very difficult to place Indian children in adoptive families.

The case isn't over, though – a South Carolina court must now decide whether staying with Brown or the adoptive parents is in the child's best interests.