

Creative Lawyering – Property Settlement Agreement as Written Assignment (a Supreme update)

July 25, 2023

By Thomas W. Repczynski

A beneficiary's interest in a life insurance policy is only as protected as the written assignment securing the interest with the policy issuer.

In the right circumstances, a Property Settlement Agreement (PSA) – or other similar agreement! – can double as any number of other useful legal documents. I've previously written of trial court successes where PSAs have doubled as a real property deed and, in a more recent case, as an "assignment" (serving to transfer an interest in life insurance policy proceeds). Over the pandemic, I left readers hanging by failing to share the appellate outcome on the "assignment" issue.

The Virginia Supreme Court took up a case of mine involving a divorcee whose deceased ex-spouse failed to honor a consensually court-ordered life insurance commitment. Essentially, the divorcing husband had promised to maintain life insurance for the benefit of his soon-to-be ex-wife and later reneged by changing the policy beneficiary designation (a not uncommon occurrence, unfortunately) shortly before committing suicide. The trial court had ruled favorably for the surviving ex-spouse (our client) but had done so on questionable legal grounds – relying on a definition of "creditor," which I had not even argued to the Court (with good reasons, it turns out!).

Suffice it to say, the circumstances in the case required a "written assignment" for the proceeds of the life insurance policy to be rightfully owed to the surviving ex-spouse. The assignment requirement stemmed not from the former couple's divorce documentation but rather from the contractual arrangement with the life insurance company issuing the policy. Additional details of the case aren't nearly as significant as the rule of law on which the Supreme Court chose to uphold the trial court's decision and the impact it ought to have on anyone expecting to benefit from the life insurance policy of another.

It turns out the Supreme Court agreed that the language of the couple's PSA satisfied all the requirements of an assignment sufficient to have effected a transfer of the policyholder's interest in the proceeds of the policy to his ex-spouse. The appellate victory was sweet – not going to lie. Our client's win, however, proved a cautionary tale for all future would-be policy beneficiaries (not to mention their divorce attorneys, financial planners, and estate planning counsel!) facing similar circumstances. Our client had lucked out inasmuch as her vengeful ex-spouse hadn't compounded his in-your-face beneficiary re-designation by pledging or otherwise re-assigning the policy to another in exchange for a financial interest of some kind. According to the Supreme Court, had he done so, he would have successfully cut his ex-spouse out of a substantial portion of the financial consideration negotiated for during the parties' divorce.

Because the PSA/assignment document was not provided to and accepted as an assignment by the insurance company (in lieu of the company's own form assignment document) prior to the policy owner's death, any subsequent assignment properly documented with the insurance company would have superseded the PSA's operative language. In essence, the reach of a PSA's operative assignment impact only extends as far as the parties to the agreement unless and until either the policy issuer becomes a party to the agreement or the policy owner opts to reassign some or all the same interest in the proceeds.

The rationale of the Court's decision might easily be extended beyond the divorce context to anyone with an expectancy in policy proceeds. I'm speaking especially in this context to anyone who might consider extending credit with the promise of repayment to be backed by policy proceeds. Failing to insist on a written assignment on the insurer's form and confirmation of the insurer's acceptance of the assignment unnecessarily affords an unscrupulous borrower the ability to leave you completely unprotected. I welcome opportunities to provide guidance prior to leaving oneself or one's client unnecessarily exposed and/or counsel when looking to extricate from unanticipated consequences after having failed to protect against them beforehand.