

Unintended Inheritance Happens More Than You Think: Ensuring Your Loved Ones Inherit as Intended

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Roughly two-thirds of Americans are estimated to die without executing a valid will. As a result, assets in their name will pass under the laws of intestacy of their home state. The laws of intestacy are essentially default rules that typically transfer a decedent's assets to their closest living relatives, such as a spouse, children, parents, or siblings.

Intestacy laws would likely transfer the assets of many decedents to their intended beneficiaries. It would be uncommon for someone to wish to disinherit their spouse or one or more of their children. However, intestacy laws do not operate on "non-probate assets," such as joint bank accounts with rights of survivorship, life insurance policies, or retirement accounts. As a result, it is likely that a portion of a decedent's assets will not pass to their intended beneficiaries. Sometimes, this means that one beneficiary receives a larger share of a decedent's assets than the others. Other times, virtually all of a decedent's assets pass to someone they had no intention of ever receiving their assets, while their intended heirs are left without any recourse.

Thankfully, some states have laws that will override a beneficiary designation of a non-probate asset if it is likely that the decedent, under the circumstances, would not have intended to provide for that person. One such common circumstance is when a decedent fails to update their beneficiary designations after divorce. For New Jersey residents, N.J.S.A. 3B:3-14 automatically revokes non-probate transfers of assets to a divorced individual, returning the assets to the decedent's estate to be distributed pursuant to the terms of their will or the laws of intestacy. Similarly, for New York residents, EPTL 5-1.4 automatically revokes non-probate transfers of assets to a divorced individual.

However, this automatic revocation will not apply in all cases and to all assets. For example, there is no automatic revocation where the assets are specifically disposed of under the terms of a "governing instrument." A governing instrument includes a will, trust, deed, or securities, such as stocks and bonds.

In the Matter of the Estate of Michael D. Jones, a case recently decided by the Supreme Court of New Jersey (the highest state court), the decedent married his ex-spouse in 1990 and named her as the pay-on-death beneficiary of his U.S. savings bonds. The decedent and his ex-spouse divorced in 2016. Their divorce settlement agreement (DSA) allocated certain assets to each individual and provided that all assets not specifically referred to in the DSA would be owned by the person whose name was on the title to the given asset. The DSA did not specifically mention the savings bonds. The ex-spouse also specifically waived her right to inherit from the decedent's estate.

The decedent passed away in 2019, intestate, without having updated the pay-on-death beneficiary of his U.S. savings bonds. His ex-spouse later redeemed the U.S. savings bonds. The decedent's daughter was appointed the administrator of the decedent's estate and promptly sought to recapture the proceeds from the U.S. savings bonds.

The court ultimately concluded that the ex-spouse was entitled to the proceeds of the U.S. savings bonds, reasoning that the

bonds were regulated by the IRS Federal Treasury regulations, the “governing instrument.” Specifically, these regulations provided that when the owner of a bond dies and is survived by the named beneficiary, the named beneficiary is recognized as the sole and absolute owner of the bond.

There are a number of takeaways from this case. First, even if the facts of this case were different and the administrator of the decedent’s estate had won, it would have been a pyrrhic victory at best. The decedent’s beneficiaries would face delays in receiving their inheritance, and the estate would incur significant legal fees and costs in reclaiming these assets.

Second, while this case only dealt with U.S. savings bonds, there are many types of assets that have “governing instruments” with specific provisions concerning the death of the account owner. For example, in *LeBoeuf v. Entergy Corp.*, the plan participant of a 401(k), who was a widower at the time, named his children as his designated beneficiaries. He later remarried. When the plan participant died, his 401(k) account had a balance of approximately \$3,000,000. His children discovered that the plan sponsor had paid the death benefits exclusively to his second wife. It was revealed that under the terms of the plan documents, a subsequent marriage *automatically revoked the beneficiary designations in favor of the new spouse*. One could argue that the benefit of this provision is that a plan participant would avoid inadvertently disinheriting their spouse. However, in *LeBoeuf*, it is almost certain that the death benefits were distributed contrary to the plan participant’s intentions.

Lastly, it highlights the critical importance of regularly reviewing existing estate planning documents, the titling of assets, and designated beneficiaries, to ensure that they pass to your intended loved ones at the time of death.