

Recent Case Makes Clear that Guardians in Maryland Cannot Change Beneficiary of Life Insurance Policy of Ward Without Prior Court Order

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There is a saying that is common among guardianship attorneys, namely: "When in doubt, let the Court sort it out." In other words, if the guardianship statutes or rules do not specifically allow you to do something, get a court order blessing your action in advance. The recent case of *United Bank v. Buckingham*, 472 Md. 407, 247A.3d 336 (Md. 2021) reinforces that saying, as the Maryland Court of Appeals found that the guardian could not change the beneficiary of the ward's life insurance policy without prior court approval. The Court noted that a section of the guardianship statute addressing a guardian's authority as to life insurance policies, namely Maryland Ann. Code, Estates and Trusts § 15-102(t), did not specifically give the guardian the authority to change the beneficiary, although the statute gave the guardian authority to conduct several other life insurance transactions. The Court rejected the reliance upon 13-203(c)(1) of the Estates and Trusts Article for authority. Section 13-203(c)(1) gives a guardian, except with specific limitations, "all the powers over the property of the minor or disabled person that the person could exercise if not disabled or a minor." The Court found that this general language was insufficient to authorize a guardian to change a beneficiary of a life insurance policy.

In the *Buckingham* case, one could argue that the outcome could have been due, in part, to the bad facts of the case, as it was alleged that the beneficiary designation was changed in an effort to avoid a creditor of the ward from collecting the funds after the ward's death. The court found that the change was contrary to the guardian's duty to preserve a ward's estate of the ward's heirs. Most cases I have been involved in, however, whether I have represented clients seeking guardianship, or I have been appointed guardian for someone, have starkly different facts. In many of these cases, a ward has been financially exploited by a family member, friend, or caregiver. In those cases, it is quite common for the exploiter to not only try to steal the ward's money while the ward is living, but also to try to manipulate the ward's estate planning framework, including beneficiary designations, asset titling, and the ward's will, to inherit from the ward when the ward dies.

I already counsel clients to seek court approval, prior to attempting to change any type of beneficiary change or other term of an estate planning framework. The *Buckingham* case makes clear that the Court also believes that guardians should abide by the "when in doubt" rule. If an action is not expressly authorized by the guardianship statute, a guardian is better off seeking court approval in advance, especially where there is likely to be a dispute over an asset or estate.

If you have questions about this or any other Family Law issue please contact Catherine H. "Kate" McQueen at (240) 507-1718 or kmcqueen@offitkurman.com.