

FOOTE Notes on Retirement

Beneficiary rules on ERISA

Scenario

Husband worked at Exxon for 25 years, most of it during his marriage. He divorced her during year 20 and obtained a property settlement which provided that she gives up all interest in his Exxon retirement plan in exchange for his surrender to her of all equity in the community house and her retirement plan. However, husband never changed the beneficiary designation with Exxon's HR department - it was still his ex wife. Husband died testate two years later, leaving to his heirs certain benefits from the plan.

Issue

To whom does Exxon pay the retirement benefits - his heirs according to his will or to the ex wife?

Answer

A retirement plan governed by ERISA cannot ignore the Plan Provisions and/or a previous QDRO in order to enforce language in documents which are not a QDRO. *Kennedy v. Dupont* (No. 07-636 US Supreme Court 1/26/09).

Application

1. Make sure that any property settlement that is not a QDRO requires that the participant immediately change the beneficiary status. Follow up to be sure this is actually done.
2. Question - does the succession representative have a state-law claim against the ex wife to recover the money paid to her from the Plan?