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Beneficiary Designations in Quebec

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The rules for designating a beneficiary are often misunderstood. Failure to understand these rules can result in proceeds being paid out to a person who was not the intended recipient. This can have both legal and tax consequences on the death of the insured.

It is therefore essential to understand the rules to ensure that they reflect the wishes of the parties. In Quebec, the *Civil Code* sets out specific legal rules on beneficiary designations and their consequences. This document will provide a comprehensive analysis of the methods and impacts of designating beneficiaries in Quebec.

How a beneficiary is designated

Beneficiary designations are a type of stipulation for the benefit of a third party.[1] With respect to insurance, however, this type of stipulation is governed by the specific provisions of articles 2445 to 2460 of the *Civil Code of Quebec*.

The *Civil Code of Quebec* states that a beneficiary designation may be made in an insurance policy or in any other form of writing, whether or not a will. The Civil Code states that:

2446. *The designation of beneficiaries or of subrogated policyholders is made in the policy or in another writing which may or may not be in the form of a will.*

A beneficiary designation must be made in writing. The written document can be in any form. Moreover, case law has adopted a broad and liberal interpretation of the text of article 2446 C.C.Q. on the possible written forms of a beneficiary designation. This has led to litigation as to the manner in which a policyholder can designate a beneficiary.

[1]Articles 1144 to 1150 of the *Civil Code of Québec (CCQ)* set out the legal rules specific to stipulations in favour of third parties. There may be situations in which these can be applied to beneficiaries who are designated in a document other than an insurance policy.

Although the policyholder's signature is strongly recommended, the courts have previously clarified that a signature on the document is not required for the designation to be valid.[2] In these cases, it must still be possible to prove that the writing represents the intention of the policyholder, even if it is not necessarily in the policyholder's handwriting.

In practice, this situation does not arise if the beneficiary is designated in the insurance application because the insurer requires that the form be duly signed. Thus, using a form provided by the insurer to designate or revoke a beneficiary is an easy solution to the question of the policyholder's intention on the death of the insured.

It is important to note that making an insurance product payable to the insured's estate, heirs, executors or other legal representatives does not constitute a beneficiary designation.[3] As a result, the insurance proceeds will become part of the insured's estate and will not be exempt from seizure by the insured's creditors.

A beneficiary designation should identify the person by name as precisely as possible. The use of simple descriptors has resulted in a number of court cases. For example, designating a beneficiary as "my spouse" could lead to issues with application or interpretation. In certain situations, it is not always possible to specifically designate the intended beneficiaries.[4] To that end, the Civil Code states that it is not necessary for the beneficiary to exist at the time the beneficiary is designated as long as the person exists when the insurance proceeds become payable.[5]

The concept of subrogated policyholder and subrogated beneficiary

When the policyholder takes out a policy on the life of another person, the policyholder may designate this person as a subrogate policyholder upon the initial policyholder's death. It should be noted that the subrogate policyholder has no rights in the policy prior to the initial policyholder's death. The initial policyholder can change the subrogate policyholder at any time. Therefore, the subrogate policyholder is always revocable.

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[2] *Veilleux c. Maritime (La), compagnie d'assurance-vie*, (C.S., 1997-12-23) and *McLean c. Bellavance (Succession de)*, (C.S., 1996-07-04)

[3]The benefit becomes part of the insured's estate pursuant to article 2456 CCQ.

[4] An unborn child, for example.

[5] See article 2447 C.C.Q.

The subrogate policyholder becomes the policyholder on the death of the initial policyholder.[6] The subrogate policyholder has the same rights and obligations as the original policyholder. Transfer of the policy to the subrogate policyholder does not result in automatic revocation of the beneficiary designation. Designating a subrogate policyholder is particularly useful for parents and children as it allows the policy to be transferred to a child[7] on the death of the original policyholder without tax consequences, since the policy does not pass to the estate.

The policyholder also has the option of designating a subrogate beneficiary in the policy.[8] In this case, if the beneficiary dies before the insured, the subrogate beneficiary would receive the death benefit. If no subrogate beneficiary is designated, either the policyholder or their estate would receive the proceeds.

Simultaneous death of insured and beneficiary

The insured and the beneficiary may die at the same time, or be deemed to have died at the same time. This may occur due to an accident, for example.

On the subject of simultaneous death, article 2448 of the *Civil Code of Quebec* states that:

> ***2448***. *Where the insured and the beneficiary die at the same time or in circumstances which make it impossible to determine which of them died first, the insured is, for the purposes of the insurance, deemed to have survived the beneficiary. Where the insured dies intestate, leaving no heir within the degrees of succession, the beneficiary is deemed to have survived the insured. In similar circumstances, the preceding policyholder is deemed to have survived the subrogated policyholder.*

[6] See articles 2445 and 2446 C.C.Q.

[7] For there to be a tax-free transfer to a child of the policyholder on the parent's death, the child must be designated as a subrogate policyholder and the life insured must be a child of the policyholder or of the beneficiary of the transfer. A bequest to a child made in a will would not qualify as a tax-free transfer because the transfer would be between the policyholder's estate and the child, not between the policyholder and the child.

[8] See article 2445 C.C.Q.

This article states that the insured is deemed to have survived the beneficiary. As a result, the beneficiary designation lapses and the death benefit becomes payable to the insured's legal heirs, not to the beneficiary's estate.

This article also states that if the insured has no legal heirs designated either by will or within the degrees of succession that are recognized by the *Civil Code of Quebec*, the beneficiary is deemed to have survived the insured and the insurance benefit will be payable to the beneficiary's estate.[9] The same rules will apply as between the initial policyholder and the subrogated policyholder, the first being deemed to have survived the subrogated one.

Revocable and irrevocable beneficiary designations

Article 2449 of *the Civil Code of Quebec* states that:

> ***2449***. *A policyholder's or participant's designation, in a writing other than a will, of his or her married or civil union spouse as beneficiary is irrevocable, unless otherwise stipulated. The designation of any other person as beneficiary is revocable unless otherwise stipulated in the policy or in a separate writing other than a will. The designation of a person as subrogated policyholder is always revocable.*
>
> *Where revocation is permitted, it may only result from a writing but it need not be express.*

This relatively simple rule has been the subject of much debate in the courts as there are no specific requirements as to the content and/or form that such a stipulation must take.[10] In

[9] See articles 653 and 683 C.C.Q.
[10] Pursuant to article 2449 C.C.Q.

fact, the policyholder's intention in making the designation must be determined. This is not always easy to do since the policyholder is necessarily deceased when the dispute arises.

The courts have stated that the beneficiary's status must be assessed at the time the designation is made.[11] For example, if the beneficiary is not married to or in a civil union with the policyholder at the time the designation is made and a marriage subsequently occurs, the beneficiary would be revocable if not specified as irrevocable prior to the marriage or if a new designation was not made after the marriage.

In practice, most insurers provide a form that allows this distinction to be made to ensure that the policyholder's wishes are clear. Generally, the form lists two types of beneficiaries. If the beneficiary is the person to whom the policyholder is married or in a civil union, the beneficiary is irrevocable, unless revocable designation is chosen by checking a specific box to that effect. By checking the "revocable" box, the policyholder confirms their intent to appoint a revocable beneficiary.

With the exception of a married or civil union spouse, the designation of any other person as beneficiary is revocable, unless otherwise specified. Finally, the revocation of a beneficiary must be in writing, but there are no specific formalities for this and may result from the writing without being specifically stated.

Designating a beneficiary in a will

The designation or revocation of a beneficiary[12] in a will is always revocable because a will is a revocable document by nature. This rule does not generally result in any particular difficulties of interpretation.

Further, article 2450 of the C.C.Q states that:

> ***2450.*** *A designation or revocation contained in a will that is null by reason of a defect of form is not null for that sole reason; such a designation or revocation is null, however, if the will is revoked.*

[11] AZ-51263065, [1986] J.Q. nº 1843 (C.A.).
[12] Including a married or civil union spouse.

> *A designation or revocation made in a will does not avail against another designation or revocation subsequent to the signing of the will. Nor does it avail against a designation prior to the signing of the will unless the will refers to the insurance policy in question or unless the intention of the testator in that respect is manifest.*

The first paragraph of this article specifies that if a will is invalid because of a defect of form,[13] the beneficiary designation is not automatically invalidated. Thus, a holograph will that is null because it was not written by the testator's own hand[14] would not automatically invalidate the beneficiary designation it contains. This makes sense because, although the will is nullified, the document may still comply with article 2446 C.C.Q. However, if the will is revoked because of a substantive defect, the beneficiary designation in the will is also revoked.[15]

The second paragraph of the article states that a beneficiary cannot be designated or revoked in a will if the beneficiary has already been designated in an insurance policy, unless the will mentions the insurance policy in question or unless the testator's intention is obvious. In addition, the beneficiary designation or revocation made in the last will will invalidate that made in a previous will.

It is worth pointing-out that the courts attach great importance to the notion of "the testator's intention." In determining this intention, the courts do not restrict themselves to the text of the will. The courts have recognized the admissibility of evidence outside the will that could help determine the testator's intention.

Failure to specifically identify the insurance policy in the will may make it more difficult to prove the testator's intention.

[13] If the principles regarding the form of the will set out in articles 712 to 730 of the C.C.Q. are not respected, it is possible for an heir to request invalidation of the will.

[14] For example, by means of a written document printed by electronic means.

[15] For example, if the testator was unfit to make a will, or if there was a defect of the testator's consent.

In the event of a challenge, the context surrounding the making of the will and all other evidence will have to be examined by the court in order to rule on a beneficiary revocation or designation made afterwards in a will. If the will is notarized, the notary's role will include informing the Client of the various options for designating or revoking beneficiaries.

Therefore, if a will is used to revoke one beneficiary and designate a new beneficiary, the specific life insurance policy should be directly referred to in the will. The use of simple and clear wording makes it easier to determine the testator's intent.

Finally, it is important to remember that designating a married or civil union spouse as beneficiary in a will is considered a revocable designation.

Beneficiary designations and the insurer

Articles 2451 and 2452 of the *Civil Code of Quebec* read as follows:

> **2451.** Regardless of the terms used, every designation of beneficiaries remains revocable until received by the insurer.
>
> **2452.** Designations and revocations may be set up against the insurer only from the day he receives them; where several irrevocable designations of beneficiaries are made separately and at different times, they are given priority according to their dates of receipt by the insurer.

Generally, the insurer is discharged from their obligations by payment in good faith[16] to the last known beneficiary. This is because an insurer cannot be held liable for payment of a death benefit to a beneficiary it does not know exists.

In addition, the legislation does not require that the beneficiary designation or its revocation be forwarded to the insurer during the lifetime of the insured. What is important is that it is received by the insurer before the benefit is paid. When a beneficiary is designated in a

[16] The duty of good faith requires the insurer to verify that the person to whom it pays the death benefit is entitled to it. *Confédération, compagnie d'assurance-vie* c. *Lacroix*, J.E. 96-1794.

will, it is important that the estate trustee promptly forwarding the will to the insurer to notify them of the beneficiary designation. This will minimize the possibility that the insurer could pay the death benefit to a previously named beneficiary.

Article 2451 C.C.Q. specifies that any designation remains revocable until the insurer receives it, regardless of the terms used. Therefore, an irrevocable designation remains revocable until received by the insurer.

Because of this, it is strongly recommended that a written record (electronic or other) be kept of all information sent to the insurer about beneficiary revocations and designations.

In the case of multiple beneficiary designations, article 2452 C.C.Q. specifies that these designations cannot be enforced against the insurer until the insurer receives them.

Distinction between a beneficiary designation and a bequest

The wording used in wills can sometimes cause difficulties in determining whether a beneficiary designation or a bequest is being made.[17] Many wills are written with general or vague wording, with the result that the death benefit is paid to the estate rather than to a specific beneficiary. This situation can be prevented by making a clear and specific beneficiary designation. The distinction between a beneficiary designation and a bequest is particularly important because the proceeds payable to a beneficiary do not form part of the insured's estate. This will be discussed in more detail in the section on the effects of beneficiary designations.

[17] It is always advisable to have a will drawn up by a lawyer.

When a beneficiary dies before the policyholder

For life insurance, the rules on representation of heirs do not apply.[18] When a beneficiary dies before the insured, the policyholder, if not also the insured, becomes the beneficiary. If the insured and the policyholder are the same person, the death benefit is paid to the policyholder's survivors. To prevent this, a subrogated beneficiary should be designated.

If more than one beneficiary is designated for a life insurance product in equal shares and one of the beneficiaries dies before the others, then the life insurance proceeds will be divided among the surviving designated beneficiaries, unless otherwise specified. This mechanism is called accretion to the co-beneficiaries. Let's look at an example:

Mr. Roy owned a life insurance policy with a death benefit of $100,000. There are four designated beneficiaries with equal shares of 25% each. One of the four beneficiaries dies before Mr. Roy. Under the accretion mechanism, the death benefit will be divided equally among the three surviving beneficiaries. To prevent this situation, a subrogated beneficiary can be designated for each of the four original beneficiaries.

If one of the beneficiaries dies before the others and they were assigned unequal shares (e.g. 15%, 20%, 25% and 40% each), there would be no accretion to the surviving co-beneficiaries. The predeceased beneficiary's share will revert to the policyholder (or the policyholder's estate if the policyholder is also the insured). To prevent this situation, designating subrogated beneficiaries is recommended.

[18] Succession by representation takes place when a descendant becomes a successor in the place of an ascendant (father or mother) who has died or is declared unworthy of inheriting. In the **direct line**, representation takes place ad infinitum in the descendants of the deceased: children, grandchildren, great-grandchildren, and so on. In the **privileged collateral line**, representation is permitted only in favour of the children of the deceased's brothers and sisters. See section 2456 para. 2 C.C.Q.

Effects of designating a beneficiary

A) Priority of policyholder and beneficiary rights

Article 2454 of *the Civil Code of Quebec* specifies that:

> ***2454.*** *The policyholder is entitled to the policy dividends and other benefits conferred on him by the contract even if the beneficiary has been designated irrevocably.*
> *Policy dividends and benefits shall be imputed by the insurer to any premium due, so as to keep the insurance in force.*
> *In either case, the contract may provide otherwise.*

Article 2454 C.C.Q. provides that a beneficiary, whether revocable or irrevocable, is not by reason of their designation, entitled to the policy dividends and other benefits conferred by the contract. This stipulation is not a matter of public policy, so the insurance contract may provide for rights in favour of the beneficiary with respect to accumulated benefits and interest. In the absence of provisions, the beneficiary's only right will be to receive the amount specifically insured in their favour.

B) Exclusion of the death benefit from the estate when a beneficiary has been designated

Article 2455 of *the Civil Code of Quebec* specifies that:

> ***2455.*** *Sums insured payable to a beneficiary do not form part of the estate of the insured. Similarly, a contract transferred to a subrogated policyholder does not form part of the estateof the preceding policyholder.*

This section protects the rights of the beneficiary so that the death benefit is exempt from seizure by the estate's creditors. Where there is a beneficiary or subrogated policyholder designation, the death benefit becomes part of the estate of the recipient and not part of the estate of the deceased. This rule is the same for a designated beneficiary or a subrogated policyholder.

For this protection to apply, the death benefit must not be payable to "legal heirs, assigns or estate" as this is not considered a beneficiary designation.

Furthermore, article 2456 of the *Civil Code of Quebec* read as follows:

> ***2456.*** *Insurance payable to the estate or to the assigns, heirs, liquidators or other legal representatives of a person pursuant to a stipulation in which those terms or similar terms are employed forms part of the estate of that person.*

This section specifies that a death benefit that is payable to the estate, assignors, heirs, liquidators or other legal representatives of a person becomes part of the estate of that person. As a result, the death benefit may be used to pay the debts of the estate. Therefore, a debtor's insolvency trustee is entitled to collect the insurance policy proceeds that are part of the debtor's estate.

Designated beneficiaries and exemption from seizure

Articles 2457 and 2458 of the *Civil Code of Quebec* read as follows:

> ***2457.*** *Where the designated beneficiary of the insurance is the married or civil union spouse, descendant or ascendant of the policyholder or of the participant, the rights under the contract are exempt from seizure until the beneficiary receives the sum insured.*

> ***2458.*** *An irrevocable designation binds the policyholder even if the designated beneficiary has no knowledge of it. As long as the designation remains irrevocable, the rights conferred by the contract on the policyholder, participant or beneficiary are exempt from seizure.*

It is important to note that the general rule that applies to beneficiary designations is that assets are liable to seizure, whereas exemption from seizure is the exception. These exceptions are set out in two specific articles.

Article 2457 C.C.Q. specifies that the rights conferred by an insurance contract are exempt from seizure when the designated beneficiary is the married or civil union spouse, the descendant (children, grandchildren, great-grandchildren) or the ascendant (parents, grandparents, great-grandparents) of the policyholder or the participant. Exemption from seizure ceases once the beneficiary has received the sum insured. It should be noted that this amount cannot be seized by the insured's creditors, only by the beneficiary's creditors. Therefore, until the death benefit is paid, creditors of the policyholder, participant or beneficiary will not be able to seize the cash surrender value of the life insurance policy.

It should be noted that beneficiary designations made prior to October 20, 1976 still have effect under the *Husbands and Parents Life Insurance Act*. This act was repealed in 1974 and people who had made beneficiary designations had until October 20, 1976 to make any beneficiary changes. After that date, if no changes were made, the previous designations became irrevocable. This was confirmed in a 1992 Supreme Court ruling.[19]

It is important to remember that the determination of "legal spouse" as a beneficiary is made at the time the designation is made and not at the time of the insured's death or the date of the marriage or civil union. Therefore, a revocable beneficiary designation made in favour of a common-law spouse, even if the common-law relationship is followed by a marriage or civil union, will not protect the rights under the contract from seizure. To do this, a new designation of the spouse as beneficiary is required.

[19] See *Lalonde v. Sun Life Assurance Company of Canada*, [1992] 3 R.C.S. 261.

A beneficiary designation made by will does not take effect until the death of the testator unless the insurer has been notified. Therefore, the rights conferred by a contract whose beneficiary was designated by will alone are liable to seizure even if the designation was made in favour of the spouse, an ascendant or a descendant.

Article 2458 C.C.Q. specifies that as long as irrevocability is stipulated, even if the designated beneficiary is unaware of it, the rights conferred by the contract to the policyholder, participant and the beneficiary are exempt from seizure, regardless of the relationship to the policyholder.

In summary, exemption from seizure applies to the following beneficiaries:

- the legal spouse of the policyholder or participant (whether the designation is revocable or irrevocable);
- an ascendant of the policyholder or participant (whether the designation is revocable or irrevocable);
- a descendant of the policyholder or participant (whether the designation is revocable or irrevocable); and
- any other person (except those mentioned above) provided that the designation is irrevocable.

Effects of divorce, legal separation and termination of civil union on beneficiary designations

Article 2459 of *the Civil Code of Quebec* specifies that:

> ***2459.*** *Separation from room and board does not affect the rights of the spouse, whether a beneficiary or a subrogated policyholder. However, the court may declare them revocable or lapsed when granting a separation.*
>
> *Divorce or nullity of marriage or the dissolution or nullity of a civil union causes any designation of the spouse as beneficiary or subrogated policyholder to lapse.*

This article specifies that divorce or nullity of marriage and dissolution or nullity of civil union causes any designation of a spouse as beneficiary or subrogated policyholder to lapse, whether or not the designation was revocable or irrevocable. This provision applies automatically without being invoked by the parties.

In these cases, revoking the spouse as beneficiary of a life insurance policy will result in the insurance proceeds becoming payable to the insured policyholder's estate, unless a subrogate beneficiary has already been designated or a new designation has been made as a result of divorce or termination of a civil union. Therefore, if after a divorce or dissolution of a civil union, a married or civil union spouse wishes to keep the person who is now the "ex-spouse" as beneficiary, the ex-spouse will have to be designated as beneficiary again.

It should be noted that legal separation does not cause the designation of a spouse to lapse unless stipulated in the separation judgement. In the case of divorce, it is also possible for the parties to decide to stipulate and agree that article 2459 C.C.Q. does not apply, particularly in an agreement on accessory measures.

One court decision states that the status of the spouse must be determined at the time the designation was made.[20] If the spouse was a common-law spouse when designated as beneficiary, article 2459 C.C.Q. does not apply. Furthermore, an irrevocable designation of a common-law spouse will remain irrevocable if there is a subsequent marriage and divorce.

Irrevocable designation and the policyholder's rights

Article 2460 of the *Civil Code of Quebec* states:

> ***2460.*** *Even if the beneficiary has been designated irrevocably, the policyholder and the participant may dispose of their rights, subject to the rights of the beneficiary.*

A beneficiary designation, whether revocable or irrevocable, does not affect the policyholder's rights to dispose of the policy.

[20] *Smith* c. *Survivance, compagnie mutuelle d'assurance-vie,* J.E. 95-1290.

Conclusion

The rules for designating a beneficiary are complex. Accordingly, it is important that that insurance advisors understand the methods and consequences of designating a beneficiary so they are able to advise their Clients appropriately.

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