

INSURANCE AND INHERITANCE ISSUES

1. Insurance to Secure Support

Ohio appellate districts are split on under what circumstances it is appropriate to order a party to maintain life insurance to secure spousal support. A majority of Ohio appellate courts allow it only if the divorce decree expressly extends the support obligation beyond the obligor's death. See Pope v. Pope, (Apr. 11, 1997), 1997 WL 177697 (Sixth Appellate District); Waller v. Waller, (2005) 163 Ohio App. 3d 303, 322 (Seventh Appellate District) McCoy v. McCoy (1993), 91 Ohio App.3d 570, 632 N.E.2d 1358 (Eighth Appellate District); Moore v. Moore (1997), 120 Ohio App.3d 488, 698 N.E.2d 459 (Ninth District) Addy v. Addy (1994), 97 Ohio App. 3d 204, 646 N.E.2d 513 (Tenth Appellate District); Vlah v. Vlah, (Nov. 28, 1997), 1997 WL 750812 (Eleventh Appellate District); Hartman v. Hartman, (Oct. 28, 1996), 1996 WL 622560 (Twelfth Appellate District). Contra Jump v. Jump (Oct. 13, 1993), 1993 WL 408017 (Second Appellate District).

While the majority view does not allow the ordering of life insurance to secure spousal support unless the spousal support does not terminate at the death of the obligor, life insurance may be ordered to secure the entire division of property, which will require that the obligation to carry it ends with the property is divided as ordered by the court. See McCoy v. McCoy (1993), 91 Ohio App.3d 570; Nori v. Nori (1989), 58 Ohio App.3d 69; Gore v. Gore (1985), 27 Ohio App.3d 141.

If it is financially feasible, the parent who is ordered to pay child support should be required to name the children as beneficiaries of a life insurance sufficient to cover the child support obligation. The other party should be given the right to periodically verify that the policy is in force.

2. Division of life insurance at divorce

Under prior law if an insured died having retained the former spouse as a named beneficiary on his or her life insurance policy, the former spouse became entitled to the proceeds of the policy. In *Overhiser, Admx v. Overhiser*, 63 Ohio St. 77, 57 N.E. 965, the Ohio Supreme Court held that the divorce in and of itself did not divest the former wife of her status as named beneficiary, as the use of the term “wife” in the policy was descriptive, not exclusionary.

In those days it was important to advise clients to review their beneficiary designations post-divorce and make the changes which reflected their desires. See *Cannon v. Hamilton* 174 Ohio St. 268, 269, 189 N.E.2d 152, 153) (Ohio, 1963).

In 1990, the legislature addressed the situation by amending R.C. § 1339.63 (now renumbered as R.C. § 5815.33) to provide that unless the divorce decree specifies otherwise, at the death of an insured, a former spouse who was designated as a beneficiary prior to a divorce, will be deemed to have pre-deceased the spouse who made the designation. Thus, if an insured dies before getting around to removing the former spouse as beneficiary, the former spouse will not receive the insurance proceeds unless the insured makes that beneficiary designation after the divorce.

The Ohio Supreme Court has held that insurance contracts entered into prior to the effective date of ORC § 5815.33 (formerly § 1339.63) on May 31, 1990, are still governed by the common law rule; i.e., the named beneficiary takes under the policy if the policy holder did not remove the former spouse as named beneficiary prior to death. See *Aetna v. Schilling*, 67 Ohio St.3d 164, 167. Thus, it is still important to advise divorce clients to review all beneficiary designations upon divorcing.

While term life insurance has no present value, other permanent life insurance policies have a cash surrender value. The cash surrender value is the amount the policyholder receives when cashing in the policy.

Since an equal division is the starting point for structuring an equitable division of marital property, a trial court should assign values to life insurance policies owned by the

parties just as to any other assets and liabilities of the parties. *Hamilton v. Hamilton* 1996 WL 622588, (Twelfth Appellate District).

3. Inheritance

Any property inherited by one spouse during the marriage is defined as separate property by Ohio Revised Code § 3105.171(A)(6)(a). As with all separate property, traceability is the focus in determining whether inherited property has lost its character if it has been commingled with marital property. See R.C. § 3105.171(A)(6)(b). See *Earnest v. Earnest* 151 Ohio App.3d 682, 785 N.E.2d 766 (Ohio App. 11 Dist., 2003).

The party contending that property is separate bears the burden of proving by a preponderance of the evidence that the assets are separate property. O.R.C. § 3105.171(A)(6)(b). *Ostmann v. Ostmann* 168 Ohio App.3d 59, 64. However, it is not sufficient to establish that the property has been commingled. The mere fact that inherited property has been commingled with other assets does not destroy its character as separate property unless the separate property is not traceable. *Ostmann v. Ostmann* 168 Ohio App.3d 59, 64.

Spouse's statutory rights to inherit from each other terminate when the marriage ends. Unless a will expressly provides otherwise, a former spouse will not take under a spouse's will if the spouse died after the termination of the marriage:

If after executing a will, a testator is divorced, obtains a dissolution of marriage, has the testator's marriage annulled, or, upon actual separation from the testator's spouse, enters into a separation agreement pursuant to which the parties intend to fully and finally settle their prospective property rights in the property of the other, whether by expected inheritance or otherwise, any disposition or appointment of property made by the will to the former spouse or to a trust with powers created by or available to the former spouse, any provision in the will conferring a general or special power of appointment on the former spouse, and any nomination in the will of the former spouse as executor, trustee, or guardian shall be revoked unless the will expressly provides otherwise.
R.C. 2107.33

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