



## Follow up on a Change of Beneficiary Designation Important

*Helen Kilitzoglou and Al Cure were common law spouses. Al was a successful business man who controlled a number of companies. His primary business manufactured furniture. Al died suddenly Easter of 2007. Following his death, a number of legal proceedings ensued which were ordered to be tried together. One of the issues dealt with a life insurance policy and a beneficiary designation change. In Helen Kilitzoglou et al v. Shannon Cure et al, 2014 ONSC 1018 (CanLII) the Ontario Superior Court considered whether the change in beneficiary designation was valid.*

In September of 2002, Al purchased an insurance policy with TransAmerica Life for \$600,000. The revocable beneficiaries listed on the application were:

- 1) Royal Bank for \$250,000;
- 2) Helen Kilitzoglou, common law spouse

Thereafter, a change of beneficiary designation form dated December 16, 2003 was signed by Al Cure. The new beneficiary was in favour of CIBC and to Tanya Cure (Al's daughter). Subsequent to this form being sent to the insurer by Al's broker, the broker wrote to Al indicating that TransAmerica could not accept the change requested in the form. TransAmerica required that a percentage amount or a copy of the current Will which gave the executor full responsibility for disbursing funds to be submitted to them. Mr. Cure never responded to this request. Al passed away before this issue could be addressed.

The insurance matter was litigated between Helen Kilitzoglou and Shannon and Tanya Cure, executors of Al's estate.

The court reviewed s. 190 of the Ontario Insurance Act in relation to the validity of the beneficiary designation change.

That section provides that an insured may, in a contract or by a declaration, designate the insured's personal representative or a beneficiary to receive insurance money. It also indicates that the insured may from time to time alter or revoke the designation by declaration.

Helen asserted that Al's failure to send in a revised version of the change of beneficiary designation form as requested by the insurer supported a conclusion that he changed his mind about wanting to change the original designation. The court however rejected this argument. It found that the relationship between Helen and Al had deteriorated and that Al had kept the change of designation private from Helen. There was no evidence that he had changed his mind.

The court concluded that Al signed the beneficiary change form in the presence of the broker, that the original copy of the form was sent to the insurer's agent but had been lost or destroyed in the process. The court said that while Al Cure did not make the necessary changes to the form requested by TransAmerica, this did not affect the validity of the change of beneficiary information. The court concluded that the change of beneficiary form signed by Al Cure met the requirements of the Insurance Act and it was a valid and binding document.

The lesson from this case is that Al's failure to follow up on the request by the insurer left the door open for Helen to make an argument that Al did not intend to make the beneficiary designation change. The facts of the case remind us that when something remains outstanding a follow up with the client should occur in an effort to prevent arguments of this nature.

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