

Life Insurance Beneficiary Designations



Producer Guide

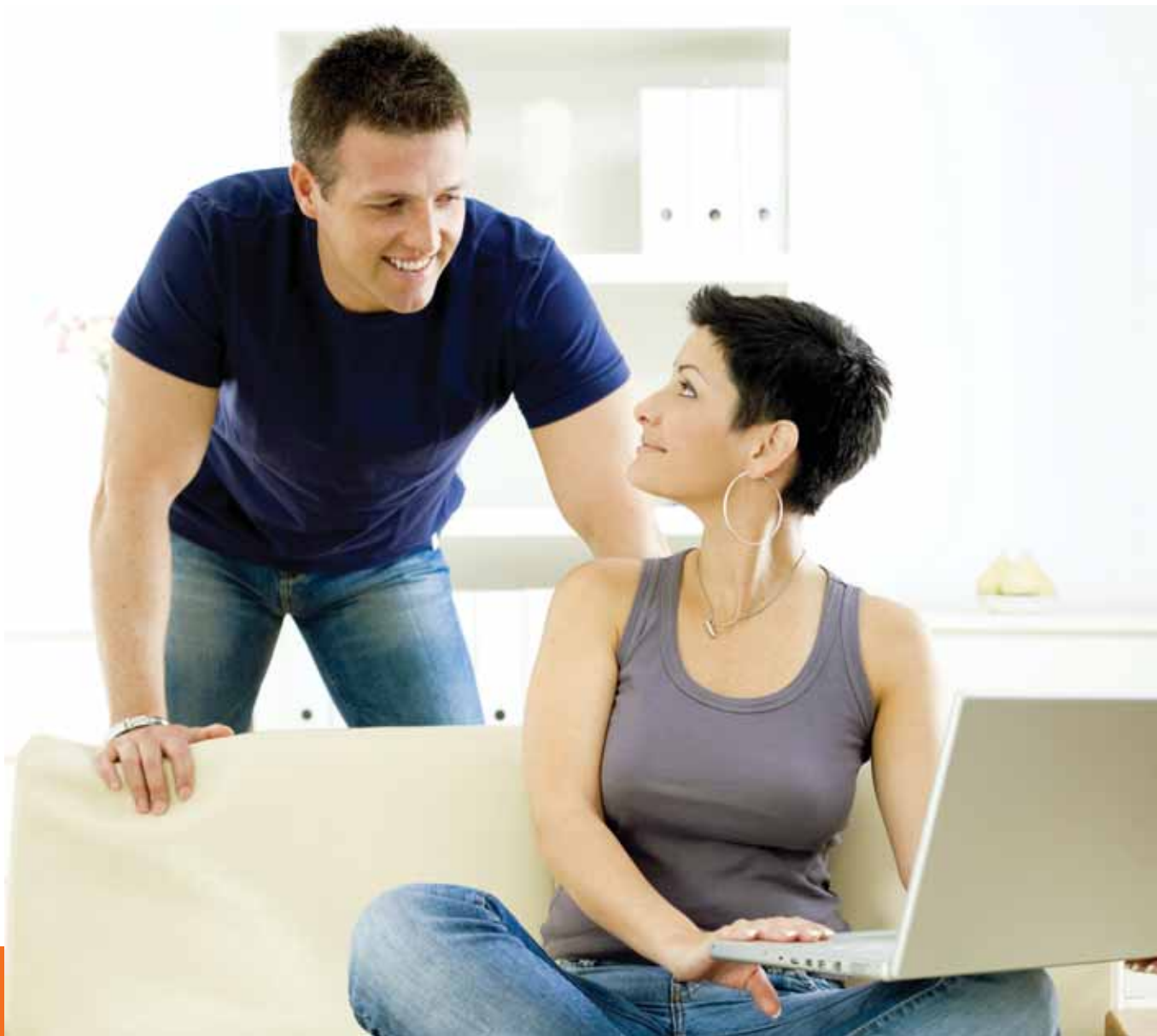
LIFE INSURANCE

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One of the most important decisions the owner of a life insurance policy makes is deciding who to name as the beneficiaries. Beneficiary designations should be considered carefully and reviewed regularly. Owners should be encouraged to consult with their legal and tax advisors about the wording of their policy beneficiary designation because the beneficiary designation may:

- Possibly not be reviewed or reconsidered again prior to the insured's death
- Transfer a large amount of money quickly and without limitations
- Pass outside the insured's or policy owner's will or other estate planning documents
- Result in the imposition of federal or state estate/inheritance taxes or cause an increase in those taxes.

Death is unpredictable; no one knows when they are going to die. Consequently, **it is important that the life insurance beneficiary designation decision be done right the first time.** While the insured is alive, many beneficiary designation alternatives are possible. After the insured's death, the beneficiaries are fixed and planning options become very limited. The ING Life Companies have created this Guide to share information about beneficiary designations in general and our current practices about making and changing beneficiary designations. For simplicity, the remainder of the Guide will refer to the ING Life Companies as "ING."

Beneficiary Designation Fundamentals

Roles in a Life Insurance Contract

There are three important positions in every life insurance contract. First is the insured. This is the person whose death will trigger the insurer's obligation to pay the death benefits. Second is the policy owner. This is the person, entity, partnership or representative who owns the policy and who has the ability to exercise the rights granted in the policy and to receive all the benefits available during the Insured's lifetime. Third is the beneficiary, selected by the owner. This is the person(s) who will receive the death benefits when the insured dies (assuming the policy is still in force).

Beneficiary Designation Considerations

- 1. Beneficiaries Must Be IDENTIFIABLE.** An important consideration in naming a beneficiary is to make sure the designation is clear enough so the beneficiary can be unquestionably identified. This is best done by stating the beneficiary's full legal name and relationship to the owner or insured (e.g. "Joan T. Smith, Insured's daughter"). The beneficiary's birth date should also be given. Other identifying information which could be included are the beneficiary's gender, relationship to the insured and Social Security number. If a designation is incomplete and the beneficiary can't be conclusively identified, the ultimate disposition of that portion of the policy's death benefits may have to be determined by a court.
- 2. Primary and Contingent Beneficiaries.** Owners can name two types of beneficiaries. Primary beneficiaries are those who are the owner's first choice to receive the death benefits. However, in order to receive his/her share of the death benefit, a primary beneficiary must be alive at the time the insured dies. In other words, primary beneficiaries must "survive" the insured. Contingent beneficiaries represent the policy owner's "back up plan." If a primary beneficiary dies before the insured or does not qualify as a beneficiary under the terms of the policy, his/her share of the death benefits are paid to a qualified contingent beneficiary.
- 3. Ability to Name Multiple Beneficiaries.** Policy owners may name more than one primary or contingent beneficiary. Each one must be identifiable along with the percentage or dollar amount of the total death benefit he/she is to receive. Beneficiary percentages may include up to two decimal points as long as the total of all the percentages equals 100%. If no percentage is indicated, the death benefits will be distributed to the surviving named beneficiaries in equal shares.
- 4. Minor Beneficiaries.** If a beneficiary is a minor at the time of the insured's death, the death benefits will not be paid directly to the minor. Instead, payment is made to someone who has the legal authority to receive and manage the death benefits on the minor's behalf. Such a person could be someone who has been appointed as the minor's guardian, as a custodian under the state's Uniform Gifts/Transfers to Minors Act, as a trustee of a trust for the minor's benefit or to another person as permitted under state law.
- 5. Irrevocable Beneficiaries.** Beneficiary designations can usually be revoked or changed at any time by the policy owner while the policy is in force. The owner can change the beneficiary as often as necessary simply by executing and filing a new beneficiary form. However, if the owner designates a beneficiary as "irrevocable," then the beneficiary has the same rights as the policy owner and both signatures are required when exercising any policy right. Thus an irrevocable beneficiary designation may only be changed with the written consent of both the owner and the irrevocable beneficiary. Because this consequence is seldom anticipated by policy owners, it is wise to carefully and fully discuss the potential consequences of making an irrevocable beneficiary designation with a policy owner before it is finalized.
- 6. Disclaiming Policy Death Benefits.** After an insured dies, a named beneficiary (either primary or contingent) is not required to accept death benefits from the policy. As long as the beneficiary has not received the death benefits, he/she may formally refuse to accept them by making a written "disclaimer." A disclaimer typically must be made within nine months following the death of the insured. There are many potential personal and financial reasons why a beneficiary may decide to forego receiving the death benefits. For example, the beneficiary may not need the money or may believe another beneficiary could put it to a better use. The beneficiary could be in poor health or have significant problems with creditors. It is also possible that accepting the death benefits could increase the size of the beneficiary's taxable estate and potentially result in a significant estate tax liability.

It is important to note that a beneficiary who makes a disclaimer has no right to direct who will receive the death benefits in his/her place. Generally, a disclaiming beneficiary is deemed to have died before the insured for the purposes of paying the death benefit. Thus, the disclaimed death benefit becomes payable to the next person "in line"—the person or persons who would have received those death benefits if the disclaiming beneficiary had died before the insured.

Best Practices for Beneficiary Designations on Policies Issued by the ING Life Companies

Each life insurance company establishes its own rules for what it will accept in the way of beneficiary designations. ING reserves the right to reject beneficiary designations that fall outside its rules. Unacceptable beneficiary designations will be returned to the policy owner for revision and re-submission. The initial beneficiary designation is made on the original life insurance policy application. The policy owner may change the original beneficiary designation on a policy issued by ING by properly completing and filing the Beneficiary Designation Form (#131287).

It is critical that the beneficiary can be quickly and accurately identified. To that end, the owner should include these pieces of information on the Beneficiary Designation Form:

→ Legal name (first, middle and last)	Sarah May Scottson
→ Date of birth	June 5, 2005
→ Social Security number (or entity TIN number)	XXX - XX - XXXX
→ Relationship to the insured	Child of the insured
→ Percentage of death benefit to be paid	40%



Whether on the application for life insurance or on the Beneficiary Designation Form, once an acceptable beneficiary designation has been received in good order at ING's Customer Service Center, it will be deemed effective on the date it was signed unless otherwise provided in the life insurance policy. ING will not be liable for any action it takes before a completed acceptable form is received. Here are some of ING's rules for what constitutes an acceptable beneficiary designation:

1. The percentage interests of all primary beneficiaries must add up to 100%. Percentages of up to two decimal points may be used (e.g. 76.25%).
2. The percentage interests of all contingent beneficiaries must add up to 100%. Percentages of up to two decimal points may be used (e.g. 33.33%).
3. **Avoid using the terms "Per Stirpes," "Per Capita" and "By Representation"** because their meanings may be subject to different interpretations under state laws. An alternative is to use the Grandchildren's Clause discussed below.
4. **Avoid using the terms "Issue," "Heirs" and "Descendants"** because their meanings may be subject to different interpretations under state laws. Often a designation of "children of the insured" or "children of the current marriage" (with or without the Grandchildren's Clause) is what is desired.
5. **Grandchildren's Clause.** When a parent owns a policy insuring his/her own life and names several adult children as the primary or contingent beneficiaries, a problem may arise if any child dies before the insured parent. Who will be entitled to receive the deceased child's share of the death benefits when the parent ultimately dies? Will the children who do survive the parent take their deceased sibling's share or will the deceased child's share be divided among his/her own children? Unless otherwise indicated, it is the policy of the ING Life Companies that the surviving children are entitled to the share of their deceased sibling by a right of survivorship. If instead, the policy owner wants a deceased child's portion of the death benefit to go to that child's children, the policy owner must so indicate by checking the box for the GRANDCHILDREN'S CLAUSE in Section B of the Beneficiary Designation Form. If this box is not checked, the deceased child's share will be divided among his/her surviving siblings. The policy owner also has the right to name a contingent beneficiary for the share of any beneficiary who dies before the insured.
6. **"Default" Beneficiary.** If no primary or contingent beneficiary survives the insured, the policy death benefits will be paid to the policy owner or his/her estate. No additional language is required.
7. **Ownership by a 403(b) or ERISA Qualified Retirement Plan.** If the policy has been purchased through a 403(b) plan or ERISA qualified retirement plan, then the plan administrator must sign the Beneficiary Designation form.
8. **When a Trust Is the Beneficiary.** When a trust is named as the beneficiary, it is imperative that the trust be easy to identify. If the trust is currently in existence, it should be identified by the name of the trust, the date it was established and the name of the trustee. The first page and the signature page of the trust should be attached to the Beneficiary Designation Form. If the trust is to be created in the future, it should be identified by the event that creates it and/or the document where its terms are located (e.g Last Will & Testament of the Owner). To the extent possible it should be identified by the name of the trust and the trustee.
9. **When a Business Entity or Charitable Organization Is the Beneficiary.** Beneficiary designations involving business and non-profit entities should indicate the type of organization and the state in which it was established.

10. **Effective Date.** A naming or change of beneficiary will be made when a written request is received, in a form acceptable to ING, at the Home Office. The beneficiary designation will then be effective as of the date it was signed, but ING will not be responsible for acts before it was received.
11. **Spousal Consent Required of Owners Living in Community Property States.** Under the laws of some community property states (the community property states are AZ, CA, ID, LA, NM, NV, TX, WA & WI), when a spouse who resides in the state purchases a life insurance policy, absent a separate property declaration, the policy is community property. This generally means that a one half interest in the policy belongs to each spouse. Consequently, the spouse who purchased the policy may not have the unilateral right to name all the beneficiaries. The non-owner spouse may have the right to name beneficiaries of up to 50% of the policy death benefit and may also have the right to use policy values during the time prior to the insured's death. In community property situations, ING's Beneficiary Designation form requires the signature of both spouses. If a new Beneficiary Designation Form is filed after the Owner is divorced from his/her spouse, then a photocopy of the entire divorce decree should accompany the new form.
- An alternative that may prevent the policy from being treated as community property is for the spouses to execute a Separate Property Agreement. Such an agreement could clarify that the policy is the separate property of one spouse and that the other spouse has no ownership rights in it as well as no ability to name a beneficiary of the death benefit. It may also be wise to pay the premiums with funds that are the separate property of the spouse who is the policy owner. The community property laws differ from state to state, so a policy owner living in one of the community property states may wish to consult his/her tax and legal advisors for advice specific to the laws of his/her state before signing an application for life insurance or a beneficiary designation form.
12. **Divorce.** State laws vary on the effect a divorce will have on beneficiary designations on life insurance. Plans subject to ERISA also have special rules as well. Policy owners should be encouraged to discuss this matter with their own attorneys so that their specific situation is addressed. The ING Life Companies do not enforce divorce decrees since we are not a party to the divorce decree/property settlement. One exception to this general rule is where the insurer receives a specific court order directing it to take specific action. For example, New York has a Qualified Domestic Relations Order that specifically directs the insurer to take specific action regarding beneficiaries. Absent this court order to the insurer the policy owner needs to take the necessary action to both comply with any divorce decree/property settlement and to ensure the owner's intended beneficiary is on file with the ING Life Companies.

Examples of Common Designations

The following table provides examples of the recommended language to be used based on the beneficiary:

Beneficiary(ies)	Recommended Language
Estate of Insured	Estate of Mary R. Smith Insured.
Spouse of Insured	John L. Smith, husband of Insured.
Owner (if different than Insured)	Barry F. Taylor, Owner.
Estate of Owner (if different than Insured)	Estate of Barry F. Taylor, Owner.
Children of Insured	Surviving Children of the Insured, including adopted children, but not step-children unless specifically named; in the alternative, the owner may name specific children.
Children of Owner (if different than Insured)	Surviving Children of the Owner, including adopted children, but not step-children unless specifically named; in the alternative, the owner may name specific children.
Trust	If the beneficiary is an existing trust, include the name of the trust, date of the trust, and the current trustee(s) of the trust.
Multiple Beneficiaries	75% to John L. Smith, husband of Insured, and 25% to Sandra R. Spencer, sister of Insured.
Business Entities or Charitable Organizations:	
Partnership	The Doe Agency, a Colorado partnership. The Falcon Family Partnership, FLLP, a Georgia family limited liability partnership.
Corporation	The Peachtree Group, Inc., a Georgia corporation.
Limited Liability Company	The Chiefs Doors, LLC, a Kansas limited liability company.
Charitable Organization	LifeFund, a Colorado corporation.

Tax Considerations and Concerns

There are several potential tax problems that may arise in life insurance policy beneficiary designations:

- 1. Triggering or Increasing Federal/State Generation Skipping (GST), Estate or Inheritance Taxes.** When an insured owns or has an incident of ownership in a policy that insures his/her own life, the death benefit may be included in the calculation of the Insured's taxable estate. The ability to name the policy beneficiary is an incident of ownership under IRC Section 2042. If the Owner's wealth already is sufficiently large enough to create a federal/state estate/inheritance tax problem, the life insurance death benefits could increase the amount of estate/inheritance taxes due. If part of the death benefit is payable to a grandchild or an unrelated person more than 37 ½ years younger than the insured, generation skipping transfer taxes may have to be paid if it exceeds the available GST tax credit. When federal and/or state transfer taxes can be triggered, it may make sense for a third party or an irrevocable life insurance trust (ILIT) to own the policy. If the policy is owned in a properly drafted ILIT, the death benefits may be able to avoid estate, GST and inheritance taxes.
- 2. Making an Inadvertent Taxable Gift by Violating the "Goodman Rule."** In some circumstances the owner of a life insurance policy may unintentionally make a large taxable gift through poor beneficiary planning. This can happen when the policy owner, the insured and the named beneficiary are all different people or entities. When different people/entities occupy each of these positions, the policy owner is deemed to make a taxable gift at the insured's death by putting the beneficiary in a position to receive policy death benefits. A common example is when a father is the owner of a policy and names his children as beneficiaries of a policy insuring his own father's life (the grandfather). This tax result was established in the case of *Goodman vs. Commissioner* 156 F 2d 218 (2nd Cir. 1946) and has ever since been known as the "Goodman Rule." It may be avoided by making sure that the policy owner is either the insured or the beneficiary.
- 3. Having Policy Death Benefits Become Taxable Income by Violating the Transfer for Value Rule.** When an Insured dies, policy death benefits are generally paid income tax free to the policy beneficiary under IRC Section 101. Unfortunately, this exclusion from income taxes can be lost if prior to Insured's death the policy owner transferred an interest in the policy to someone else and received valuable "consideration" in return. IRC Section 101 defines "consideration" broadly as anything of value including money, a financial benefit, a promise to do something or a promise to forbear from doing something. This is the "Transfer for Value Rule" and it is a complex rule of income tax law. Because a transfer for value is not final until the insured's death, it may be possible to "cure" the transfer while the insured is alive. IRC Section 101 also recognizes several exceptions to the transfer for value rule which may help avoid this income tax problem.
- 4. IRC Section 101(j)—A Business Is a Beneficiary of a Policy Insuring One of its Employees.**

Summary of IRC § 101(j)

Section 101(j) was enacted as part of the Pension Protection Act ("PPA") which was signed into law on August 17, 2006. Under § 101(j), where the owner of a life insurance policy is a business and where the insured is an employee of the business, death benefits received by the employer may be excluded from gross income so long as two conditions are met: (i) the policy is held on an appropriate insured; and (ii) the employer satisfies all of the new disclosure and consent requirements. If both of these conditions are not satisfied, death benefits from employer-owned life insurance ("EOLI") policies may be includable in the business' gross taxable income.

Appropriate Insureds

In order for death benefits to be excluded from gross income, an EOLI policy must relate to an appropriate insured. An EOLI policy involves an appropriate insured if any of the following conditions is met:

- The insured was an employee at any time during the 12-month period prior to death;
- The insured was a director of the corporation at the time the policy was issued;
- The insured was a "highly compensated employee" (as defined in IRC § 414(q)) at the time the policy was issued;
- The insured was among the highest paid 35% of employees at the time the policy was issued;
- The death benefit is used to pay benefits to the insured's heirs, estate, or a trust for the benefit of one or more members of the insured's family; or
- The death benefit is used to purchase an equity interest in the corporation from the insured's heirs, estate, or a trust for the benefit of one or more members of the insured's family.

Disclosure and Consent Requirements

In addition to meeting the proper insured requirements, a business must meet all of the following disclosure and consent requirements **prior to issue** of the EOLI policy:

- i. The employee must be notified **in writing** that the corporation intends to insure the employee's life;
- ii. The employee must be notified **in writing** of the maximum face amount for which the employer might insure the employee;
- iii. The employee must be notified **in writing** that the corporation will be a beneficiary of some or all of the policy death benefits;
- iv. The employee must give **written consent** to being insured by the corporation; and
- v. The employee must give **written consent** to coverage continuing after employment with the corporation is terminated.

It is important to make sure that insured employees are getting notices and providing consent to all of the specific requirements set out in § 101(j). While many insurance carriers provide consent forms as part of the insurance applications, it is unlikely that these forms will satisfy § 101(j). It is especially unlikely that the insurance carrier's standard consent forms will provide specific notice about the maximum amount of insurance that an employer might apply for or that there will be a provision regarding the possibility of coverage continuing after employment is terminated. A better practice may be to have employees sign an additional notice and consent form that is designed specifically for § 101(j) and have the business maintain those forms as part of its records. Finally, keep in mind that these notice and consent provisions also apply to policies on business owners if the owner is also an employee of the business.

5. Other Potential Beneficiary Designation Problems

- Failing to name contingent beneficiaries.
- Naming a minor child as a beneficiary without providing management assistance (trustee, UTMA/UGMA custodianship, or guardian) while the child is a minor.
- Failing to file a new beneficiary designation form after a major life event (divorce, death of a beneficiary, change of objectives).
- Failing to have beneficiary designation coordinated with the insured's or policy owner's other estate planning documents.
- Ignoring/overlooking estate and gift tax consequences of different beneficiary options.
- It is always a good practice to remind policy owners in writing that they should consult with their legal and tax advisors before finalizing their beneficiary designations.

Conclusion

Once a life insurance policy has been purchased, great care should be given to the beneficiary designation. This is the mechanism for distributing the policy's income tax free death benefits and it is the culmination of the purchase of the policy. On the surface beneficiary decisions may seem simple and straightforward, but they have the potential to be complicated and difficult to implement. Treat beneficiary designations with great care and remind policy owners to review their beneficiary designations at frequent intervals.

Additional Materials:

- Beneficiary Designation Form (#131287) can be found on ING for Professionals, under Forms.
- The Pension Protection Act Notice and Consent Form (IRC 101(j)) Specimen can be found in a number of places including the Wealth Transfer/Estate Planning microsite (www.INGWealthTransfer.com) under Forms and Documents or on the Executive Benefits microsite (www.INGExecutiveBenefits.com) under Resources & Forms.
- Checklist for Life Insurance Beneficiary Designations (#162905) can be found on ING for Professionals or the Wealth Transfer/Estate Planning microsite (www.INGWealthTransfer.com).

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