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PRACTICE AREAS

Employee Benefits

ESOPs (Employee Stock Ownership Plans)

Beneficiary Designations Under Qualified Plans

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Qualified retirement plans, such as 401(k) Plans, ESOPs, Profit Sharing Plans and other retirement plans ("Plans"), virtually always provide a benefit payable to a beneficiary following the participant's death. Accordingly, the designation of beneficiaries under such Plans, both a primary beneficiary and a secondary beneficiary, is an important part of a participant's retirement planning and estate planning. The rules relating to beneficiary designations for Plans are often complicated and confusing. Employers sponsoring such Plans should ensure that each participant has a current executed beneficiary form on file.

A fundamental question for any Plan's beneficiary designation form relates to whether spousal consent must be obtained for a participant to name a nonspouse beneficiary. If either the Plan or the law requires spousal consent to name a nonspouse beneficiary and spouse consent is not obtained or is defective, a Plan Administrator must carefully determine the correct payee to avoid paying the death benefit twice, once to the beneficiary pursuant to the beneficiary designation and again to the spouse pursuant to applicable law. Many plans have an exception to the spouse consent rules, but often the spouse consent rules are imposed by the Plan even if the law does not require spouse consent to a nonspouse beneficiary.

There have been many changes in federal pension law that have an impact on a participant's beneficiary designation form. Beneficiary forms drafted even a few years ago may be outdated and not compliant with current law. Accordingly, a Plan Administrator should, at a minimum, confirm that a beneficiary designation form is in fact on file for each participant. The Plan Administrator should also confirm whether spouse consent is necessary in any event where the primary beneficiary is someone other than the participant's spouse. In addition, a notary signature and other legal requirements may be necessary in order to create a valid beneficiary designation.

If no beneficiary designation is on file, the Plan document usually contains a default provision. The Plan's default provision may be contrary to a

participant's wishes. Plan Administrators have found themselves having to pay a beneficiary pursuant to the Plan's default provisions notwithstanding the assumption of the parties that a designated beneficiary has been properly named.

Careful review of the beneficiary designation forms on file with the Plan could eliminate significant problems in the future.

If you have questions regarding beneficiary designations in qualified retirement plans, please contact Stephen Lowney at 517.371.8272.

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