



Nominating

a minor as a beneficiary

on a life insurance policy.

It is trite law that a person can nominate a minor as a beneficiary on a life insurance policy. Remember, the minor will not be regarded as a party to the contract (i.e. the policy) between the policyholder and the insurer. The issue of contractual capacity, which is required for a contract to be considered valid and binding in South Africa, thus doesn't come into play. Contractual capacity refers to the legal capacity of an individual to enter into valid agreements.

The true nature of a beneficiary nomination on a life insurance policy is that of a stipulatio alteri. The common law principle of stipulatio alteri refers to a contract between two persons, but for the benefit of another. The policyholder contracts with an insurer for the policy proceeds to be paid by the insurer to a third party, i.e. the nominated beneficiary.

When you take out a life policy, you will be asked to nominate a beneficiary. The policyholder is of course not compelled to nominate a beneficiary – he/she has the right to nominate a beneficiary. If no beneficiaries have been nominated, the proceeds of the policy will be paid to the deceased estate upon the death of the policyholder. The obvious benefit to nominating a beneficiary is to thereby exclude the proceeds of the policy from the deceased estate (which means no executor's fee will be payable on the benefit).

The problems with nominating a minor

It is common for parents to nominate their children as beneficiaries on policies – which children are often minors at the time of death.

In the above instance the proceeds of the policy will (usually) be paid to the minor's guardian. The problem with this is that the proceeds might never reach the minor for whom it was intended. Consider the situation where the parents are divorced. The proceeds will be paid to the ex-spouse (assuming he/she is the minor's guardian) and could end up being utilised for other things – which is exactly what the policyholder wanted to avoid by nominating the minor child as the beneficiary and not his/her ex-spouse.

Another problem would be where there is more than one guardian. The Children's Act No 38 of 2005 defines a "guardian" as "a parent or other person who has guardianship of a child". In a culture as diverse as ours it is thus possible for a minor to have more than one guardian at the time of death of the policyholder. In terms of section 18(4) of the Children's Act each of the persons qualifying as the minor's "guardian" would be competent to act independently and without the consent of the other.

Another problem is where the minor doesn't have a legal guardian (or no legal guardian has been appointed yet). In such an instance the proceeds will have to be paid to the Guardian's Fund until the minor reaches the age of majority. In terms of the Children's Act 38 of 2005 the age of majority is 18 years.

The Guardian's Fund

The Guardian's Fund falls under the administration of the Master of the High Court. The purpose of the Guardian's Fund is to protect the funds of minors, persons lacking legal competence and capacity, known or unknown, absent as well as untraceable heirs.

When the Master receives or accepts any money he/she must open an account in the books of the Guardian's Fund in the name of the person to whom the money belongs or the estate of which that money forms part. The money in the Guardian's Fund is invested with the Public Investment Corporation and interest accrues on a monthly basis at an annual rate, which is determined by the finance minister.

The problem with the Guardian's Fund is that accessing the money can be quite cumbersome. Maintenance can be claimed by the guardian / tutor / curator / person looking after the minor by way of an application in the prescribed form, supported by quotations and accounts. Furthermore, the interest rate on the investments is typically much lower than one would be able to achieve through other investment vehicles. Lastly, the minor can only claim the invested money (plus interest thereon) on reaching the age of majority.

Conclusion

Policyholders often don't consider all the implications of nominating a minor child as a beneficiary on a policy. It's important to remember that, should the proceeds be paid to the minor's guardian, such guardian may spend it in any way he/she deems fit.

beneficiary

There are lots of cases where someone names a trust as beneficiary because the husband (or spouse) is a bad money manager.

Do not hesitate to contact us if you require any additional information or any clarity on your current portfolio :

Tel: 012-345 6480 * Fax: 086 513 0769 * Geral : 082 326 5517 * E-mail: geral@cubeadvice.com

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