

ESTATE PLANNING FOR THE MILITARY

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Estate planning for members of the military often differs from the model used in a civilian practice. For one thing, the military client requesting a will or other estate-planning document may be much younger than the typical civilian client. Due to the dangers associated with service, preventive law programs in the military encourage servicemembers to have their affairs in order and to execute wills—more than 550,000 wills were prepared for active duty and reserve service members during the Desert Storm mobilizations. Very often clients do not have much more than their \$250,000 Servicemember's Group Life Insurance Policy (SGLI) and other military benefits, and these should be reviewed and coordinated with the will or estate plan.

SGLI covers reservists as well as active members and is automatic unless the servicemember affirmatively declines or reduces coverage. Few single civilian clients age 18 to 22 carry this amount of life insurance, so designating a beneficiary is important. Most young, single servicemembers designate their parents as primary beneficiaries and siblings as contingent beneficiaries. If the siblings are minors, it may be prudent to include a trust in the will or designate a custodian under the Uniform Transfers to Minors Act. Married servicemembers with children most often fund a testamentary contingent children's trust. The beneficiary designation form, Servicemembers' Group Life Insurance Election and Certificate (Form 8286), is quite different from a commercial life insurance form; a review copy is attached (see "[SGLI](#)"). Additional information is covered in the SGLI Handbook, available at the Department of Veterans Affairs website, <http://www.insurance.va.gov>.

One of the most important attributes of SGLI is that it is a federal statute and cannot be controlled by or subject to a state court order or judgment. The member's beneficiary designation governs payment of the proceeds, irrespective of contrary intent expressed in a last will and testament or by other agreement, that is, separation or divorce decree. If there is no named beneficiary or the servicemember indicates that payment should be made "by law," the terms of the insurance contract and 38 U.S.C. section 1970 dictate that SGLI proceeds be paid in the following order: widow/widower, children, parents,

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executor/administrator, and, lastly, other next of kin. If the beneficiary is a child, the insurance proceeds are paid to the child's guardian. The appointment of a guardian often is time consuming and costly.

Case law is equally well established concerning payment of SGLI proceeds. The U.S. Supreme Court in *Ridgway v. Ridgway*¹ held that federal law gives the insured an absolute right to designate a policy beneficiary and that antiattachment provisions protect proceeds from state court domestic relations actions. Lower federal courts continue to follow *Ridgway* in enforcing "unambiguous designation" of beneficiaries. For example, the court in *Matthews v. Matthews*² held that the insured's designation of his current wife as beneficiary on the insurance contract took precedence over a state court divorce decree ordering the decedent to designate his children as beneficiaries.³

If the client is an active duty member, there may be a problem determining what state law governs the will. This is usually decided by a "domicile" test in which the state of domicile is defined as the state to which a person consistently has the intent to return when in other locales. A common way to determine this involves calculating the individual's contacts with a particular state: Where does the person vote, register a car, own real estate, pay income or other taxes, and the like. It is only at the time of death that the state of probate is determined.

This is not a difficult decision for a reservist, because the standard "weekend warrior" has a permanent state of residency. For active duty personnel who have moved numerous times and left trails of contacts in each state, this can be problematic. The members' service records may still list the state from which they entered the service. Other factors involve the children's guardians and where the children will live if both parents are dead; if there is a children's trust, determine where the trustee lives and what state law will control the trust. Issues like these often are resolved by reviewing all the factors and then making a compromise based on the most important ones: Where the real property is, for example, or where the children will live. Keep in mind that interpreting the substantive law of another state or drafting documents to meet that state's requirements can give rise to ethical question concerning multijurisdictional practice.

The majority of complex wills for military members are required not because of estate tax considerations, but because the testator has a "blended family." This again differs from civilian practice in that the clients are younger and generally have not had legal estate-planning experience. Many clients have minor children from two or more relationships and want to provide for them equally. Because most clients initially leave their estates to their present spouses, children from other relationships sometimes are left out; the spouse may have no contact with them after the parent's death and may not pass on any portion of

the estate. Making clients aware of these consequences can give rise to providing for each set of children separately, through the use of trusts, UTMA provisions, or multiple guardian designations, and working around the spouse's right of election.

Notes

Author's Note

This article highlights only the areas of main concern in assisting a military member in estate planning, with the understanding that additional issues must be dealt with, such as taxation, probate costs, fiduciary selection, and the like.

1. 454 U.S. 46 (1981).
2. 926 F. Supp. 650 (N.D. Ohio 1996).
3. *See also* Prudential Life Ins. Co. v. Music, 977 F. Supp. 842 (W.D. Mich. 1997) (ex-wife's name that remained on policy after divorce took precedence over insured's children).