



EMPLOYEES ARE RESPONSIBLE FOR BENEFICIARY DESIGNATIONS

The Federal Employees’ Group Life Insurance Act of 1954 (FEGIA) establishes an \$824 billion program providing low cost life insurance for hundreds of thousands of federal employees. FEGIA allows an employee to name a beneficiary of life insurance proceeds, and specifies an “order of precedence” providing that the employee’s death benefits accrue first to that beneficiary ahead of other potential recipients.

In 1996, when he was one of those federal employees who could participate in the FEGIA program, Warren named Judy, his wife at the time, as the named beneficiary on his life insurance policy. In 1998, the couple divorced. In 2002, Warren married Jacqueline. Warren died suddenly in 2008, without ever having changed the named beneficiary from Judy to Jacqueline. As a result, the ex-wife Judy filed a claim for the \$125,000 in life insurance proceeds, and was paid.

Jacqueline sued Judy in a state court to recover the life insurance proceeds, and she had more to support her claim than just a supposition that Warren would have wanted it that way. In short, she claimed with some justification to have state law on her side.

A state statute revokes a beneficiary designation in any contract that provides a death benefit to a former spouse where there has been a change in the decedent’s marital status. In addition, in the event that this provision is preempted by federal law, a separate provision of the state law provides a cause of action making the former spouse liable for the principal amount of the proceeds

Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking any action on matters covered by this newsletter. Nothing herein should be construed to create or offer the existence of an attorney-client relationship.

to the party who would have received them if the first provision was not preempted.

The U.S. Supreme Court sided with Judy, the former wife, notwithstanding that there was a certain logic to the position that Warren most likely would have preferred that the proceeds go to his wife at the time of his death. The unassailable fact was that, though he had ten years after his divorce from Judy and six years after his remarriage to Jacqueline to do so, Warren never changed the named beneficiary on his policy.

Most importantly from a legal standpoint, his selection of a named beneficiary could not be overridden by operation of any state law. Such a result was foreclosed by the doctrine that federal law preempts state law where the two conflict. Thus, even the state statute that sought to foresee the possibility of federal preemption and accomplish an end run around it could not do so.

Simply put, if a beneficiary, Judy in this case, is properly named for a FEGIA policy, the insurance proceeds owed to that person cannot be allocated to another person, in this case Jacqueline, by operation of state law. Apart from the legal precedent it set, the case is an object lesson in the importance of keeping one’s estate plans, including beneficiary designations, current. Had Warren taken the simple step of filling out the form to change beneficiaries on his policy sometime before he died, assuming that was his wish, the protracted litigation that ensued after his death could have been avoided. ■

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Legal Matters

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PROTECTING YOUR RIGHTS WITH A PROPER LLC FORMATION

by Jeffrey J. Steffen, Attorney

We’ve all heard radio ads or seen television commercials for online legal form providers – they make their pitch to use their services to set up your new limited liability company (“LLC”) – how difficult can it be, anyway? Why should I pay a lawyer to do something so basic?

Over the past few years, I have been asked by several clients for advice and guidance on how to resolve an internal dispute between the members of an LLC which was formed by one of the more popular online legal form providers. Naturally, one of the first steps in my analysis is to review the governing documents of the company – which, in the case of an LLC, are the articles of organization and the operating agreement. Unfortunately, more often than not, a client will simply take the forms provided by the form provider, and place them in a file without reviewing them, not knowing that the operating agreement is incomplete, many times with material terms missing.

One of the more common items that I have found that has not been “filled out” in the form operating agreement is the membership information – either who the members are, or what the respective ownership percentages/ amounts of each member are. If that information is blank, incomplete or incorrect, and the members are in the midst of a dispute, the legal cost of resolving such a situation will quickly dwarf the amount of money “saved” by avoiding the use of an attorney when forming the company.

Another problem we encounter at the Firm is when a member tells us what was “agreed on” by the members when the LLC was formed, but that deal point is not addressed in the operating agreement. One common example

concerns the distribution of money – perhaps one of the members believes he was entitled to a preferred return on money he invested in the business before any general distributions are made.

Another example concerns the admittance of new members – under what circumstances will that member be admitted, and will the existing members have their membership interest diluted?

These types of issues should be addressed in the operating agreement when the business is being formed. No two businesses are the same, and taking a cookie cutter approach to forming a business is not always appropriate. Next time you visit one of those legal form provider websites, take a look at the fine print on the bottom of the page – you will see some form of the following disclosure: “We are not a law firm or a substitute for an attorney or law firm. We cannot provide any legal advice.”

Building a business is like building anything – you want to start with a solid foundation. While money is often tight in the early days of a business, trying to save a few hundred dollars up front could end up costing you thousands down the line. That said, if you do feel you can use an online legal form provider to file the articles of organization to form your LLC, we highly recommend working with an attorney to draft the operating agreement, or review the form you were provided prior to having it executed. As the saying goes, an ounce of prevention is worth a pound of cure! ■





SUPER LAWYERS, RISING STARS, & LEGAL ELITE

Hutchison & Steffen is proud to announce that its attorneys were recognized in June with multiple awards for excellence in the practice of law. These attorneys are dedicated to their professional craft and to becoming the best in the business. A total of 16 Firm attorneys were named to various annual lists, highlighting their skill and work in the legal community. These lists—Mountain States Super Lawyers, Mountain States Rising Stars, and Nevada Business Magazine’s Legal Elite – are all highly regarded and well-respected in the profession, and inclusion is a significant honor.

Mountain States Super Lawyers recognized Joseph R. Ganley, Mark A. Hutchison, Joseph “Sid” Kistler, Patricia Lee, Todd L. Moody, James H. Randall, John T. Steffen and Michael K. Wall. The attorneys were selected using a rigorous, multiphase rating process in which peer nominations and evaluations

were combined with third-party research. Mountain States Rising Stars uses the same selection process as Super Lawyers, with one exception: to be eligible for inclusion in Rising Stars, a candidate must be either 40 years old or younger or in practice for 10 years or less. Named to this list from the Firm were Z. Kathryn Branson, Richard L. Doxey, Jeffrey R. Hall, Jared R. Owens, Cami M. Perkins, Todd W. Prall, and Jessica S. Taylor.

Nevada Business Magazine publishes an annual list of attorneys selected for their accomplishments by their legal professional peers. The list is compiled using a strict voting process to select attorneys for the Legal Elite list each year. This year, five Hutchison & Steffen attorneys were selected. Named to this list were Mark A. Hutchison, Joseph R. Ganley, Patricia Lee, Jacob A. Reynolds, and Jessica S. Taylor. ■

Congratulations TO ALL OF THE ATTORNEYS WHO MADE THE LISTS!



E-MAIL IS BINDING

In law as in society at large, signing contracts on paper in ink (and maybe in triplicate) now seems so 20th century. If your reflex is still to regard e-mail communications as only informal give and take, think again. A recent case demonstrates that if the necessary terms for an agreement are present in e-mails, a binding agreement will result. If you don’t want that outcome, you are well advised to make it clear in the e-mail itself that no party will be bound until a final agreement is signed by all parties.

Eric signed an agreement to buy a truck stop. The agreement included a financing contingency and required Eric to make a large refundable deposit that would be held in escrow. When Eric could not secure the necessary financing, he terminated the purchase and sale agreement and asked for his deposit back. The owner declined, saying that Eric had broken the agreement in bad faith.

After Eric sued the truck stop owner in federal court and was hit with a counterclaim, the parties, through their attorneys, engaged in settlement negotiations by e-mail. Ultimately, Eric’s attorney accepted the owner’s settlement offer involving a division of the deposit money between the parties. Eric’s attorney concluded an e-mail by

saying, “To move this along, I will send you a draft settlement agreement (and other documentation) tomorrow.” The next day the owner’s lawyer replied in another e-mail, saying, “Glad we were able to get it done. Thanks.”

About a week later, when the settlement had been reduced to writing and was ready for signatures, the defendant owner of the truck stop was placed into receivership by a state court. The receiver refused to follow through with the settlement agreement. Eric went back before the federal court, where his motion to enforce the settlement was granted.

Rejecting a contention made by the defendant, the court ruled that because all of the material parts of a settlement had been set out in, and agreed to, in the exchange of e-mails, there was a binding and enforceable settlement, even though in their e-mails the parties had alluded to a later writing that would embody the agreement. When the parties executed that written agreement, they were merely “memorializing” the terms of the settlement, not creating them. The agreement was complete and binding when the attorneys clicked “Send” to exchange their last e-mails finalizing the settlement. ■

THE FIRM IS PROUD TO *Welcome* THREE ATTORNEYS TO ITS LAS VEGAS OFFICE



Jeffrey J. Steffen is an Of Counsel member of the firm and focuses his practice in the areas of corporate and commercial law, landlord/tenant law, asset protection and business planning, real estate, and construction law. Originally from Chicago, Illinois, Jeff received his B.A. from Northern Illinois University, and his J.D. from the John Marshall Law School – Chicago. He practiced law in Chicago for three years before moving to Las Vegas. Prior to joining Hutchison & Steffen, Jeff spent several years at two prominent regional firms, where his practice focused on real estate and corporate transactions. Jeff is admitted to practice in Illinois and Nevada.

Michael S. Rawlings is an associate in the Firm’s litigation department, practicing in the areas of business and commercial litigation, construction defect, insurance defense, and family law. Michael attended Utah State University and received a Bachelor of Arts in English, with a minor in Japanese. He earned his J.D. at the Thomas M. Cooley Law School in Lansing, Michigan. Michael is admitted to practice in Nevada.



Casey J. Nelson is an Associate member of the firm, practicing primarily in business and commercial litigation, real estate law, and landlord/tenant law. Casey received his J.D. from the William S. Boyd School of Law at the University of Nevada, Las Vegas. While in law school, Casey was the recipient of the CALI award in Legal Drafting III: Pretrial Litigation, co-led the student chapter of the Federalist Society, and founded the Second Amendment Society. He is admitted to practice in both Nevada and Utah.

More information about all of the Firm’s attorneys may be found at hutchlegal.com. Click on the Attorneys link. ■

